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11  
12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
14

15 MARK DALPOGGETTO, Individually  
16 and on Behalf of all other similarly  
situated

17 Plaintiff,  
18

19 v.

20 WIRECARD AG, MARKUS BRAUN,  
21 BURKHARD LEY, ALEXANDER  
22 VON KNOOP, JAN MARSALEK,  
23 SUSANNE STEIDL, WULF  
24 MATTHIAS, and ERNST & YOUNG  
25 GMBH  
WIRTSCHAFTSPRUEFUNGSGESEL  
LSCHAFT

26 Defendants.  
27  
28

Case No. 2:19-cv-00986-FMO-SK

**SECOND AMENDED CLASS  
ACTION COMPLAINT FOR  
VIOLATION OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

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## GLOSSARY OF DEFINED TERMS

The following short forms and citations are used herein:

TERM	DEFINITION
“ADS”	American Depositary Share
“ADR”	American Depositary Receipt <sup>1</sup>
“BNY”	The Bank of New York Mellon (“BNY”)
“Citibank”	Citibank, N.A.
“Class Period”	August 17, 2015 through June 26, 2020, both dates inclusive
“Company”	Wirecard AG
“Depositary Banks”	Collectively, Citibank, BNY, and JPMorgan
“Ex. _”	Exhibits to the Second Amended Class Action Complaint for Violation of the Federal Securities Laws, filed concurrently herewith
“Exchange Act”	Securities Exchange Act of 1934
“E&Y”/“EY”	Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft
“FT”	The Financial Times
“IFRS”	International Financial Reporting Standards
“JPMorgan”	JPMorgan Chase Bank, N.A. (“JPMorgan ”)
“GAAP”	Generally accepted accounting principles
“OTC”	Over-the-Counter
“OTC Markets Group”	OTC Markets Group Inc.
“SEC”	United States Securities and Exchange Commission
“WDI”	Common stock issued by Wirecard
“Wirecard”	Wirecard AG

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<sup>1</sup> “ADRs” is used collectively to refer to both ADRs and ADSs.

**EXHIBIT LIST**

EXHIBIT	DESCRIPTION
1	Form F-6 filed by Citibank, N.A., dated September 18, 2013
2	Form F-6 filed by JPMorgan Chase Bank, N.A., dated February 1, 2016
3	Form F-6 filed by The Bank of New York Mellon Corporation, dated October 2, 2019
4	Form F-6 filed by JPMorgan Chase Bank, N.A., dated November 22, 2019
5	SEC Office of Investor Education and Advocacy, Investor Bulletin: American Depositary Receipts (Aug. 2012)

1           Lead Plaintiff Lawrence Gallagher (“Plaintiff”), individually and on behalf of  
2 all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s  
3 complaint against Defendants (defined below), alleges the following based upon  
4 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief  
5 as to all other matters, based upon, *inter alia*, the investigation conducted by and  
6 through Plaintiff’s attorneys, which included, among other things, a review of the  
7 Defendants’ public documents, conference calls and announcements made by  
8 Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire  
9 and press releases published by and regarding Wirecard AG (“Wirecard” or the  
10 “Company”), analysts’ reports and advisories about the Company, and information  
11 readily obtainable on the Internet. Plaintiff believes that substantial evidentiary  
12 support will exist for the allegations set forth herein after a reasonable opportunity for  
13 discovery.  
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## 18                                   **I.     NATURE OF THE ACTION**

19           1.     This is a federal securities class action seeking damages from Defendants  
20 Wirecard, Markus Braun, Burkhard Ley, Alexander von Knoop, Jan Marsalek,  
21 Susanne Steidl, Wulf Matthias, and Ernst & Young GmbH  
22 Wirtschaftspruefungsgesellschaft (“E&Y”) for violations of the U.S. Securities  
23 Exchange Act of 1934 (“Exchange Act”) in connection with transactions in: (i)  
24 Wirecard American Depositary Receipts (“ADRs”) sold under the ticker symbol  
25 WCAGY on the Over-the-Counter (“OTC”) Market in the United States; and (ii)  
26  
27  
28

1 Wirecard common stock sold as foreign issue shares under the ticker symbol WRCDF  
2 on the OTC Market in the United States .

3  
4 2. The claims alleged herein are brought on behalf of a class (the “Class”),  
5 consisting of all persons and entities other than Defendants who purchased shares of  
6 WCAGY and WRCDF on the OTC Market between August 17, 2015 and June 26,  
7 2020, both dates inclusive (the “Class Period”). Plaintiff seeks to recover compensable  
8 damages caused by Defendants’ violations of the federal securities laws and to pursue  
9 remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the  
10 “Exchange Act”) and Rule 10b-5 promulgated thereunder.  
11  
12

13 3. This case arises from Wirecard’s deliberate use of improper accounting to  
14 conceal a concerted effort to fraudulently inflate sales and profits at Wirecard  
15 businesses in Dubai, Ireland, and elsewhere. Wirecard exploded in value over the past  
16 decade, growing to a market capitalization greater than Deutsche Bank, by presenting  
17 itself as a fast-growing fintech champion with an ever-increasing global network.  
18  
19

20 4. The Company’s accounting fraud was orchestrated at the highest levels of  
21 the Company. In October 2019, a series of whistleblower-provided internal Company  
22 spreadsheets and correspondence were published that revealed numerous instances of  
23 deliberate violations of International Financial Reporting Standards (“IFRS”) and  
24 generally accepted accounting principles (“GAAP”) carried out at the direction or with  
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1 the knowledge and approval of Wirecard's most senior executives.<sup>2</sup> The reports of the  
2 Company's fraudulent accounting practices were initially dismissed by the Company  
3 as a baseless "short-seller" scheme to bring down the value of the Company's shares.  
4

5 5. The fraud was further confirmed by both a criminal inquiry in Singapore  
6 into its accounting at several subsidiaries in Asia and the Pacific, as well as a special  
7 audit by KPMG announced in November 2019.<sup>3</sup> The Company's Chairman, who  
8 resisted calls for an independent audit, resigned suddenly in January 2020.<sup>4</sup>  
9

10 6. On April 28, 2020, and after months of repeated assurances to the  
11 investing public that KPMG's audit would produce no significant negative  
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21 <sup>2</sup> Dan McCrum, *Wirecard's suspect accounting practices revealed*, The Financial  
22 Times (Oct. 14, 2019), <https://www.ft.com/content/19c6be2a-ee67-11e9-bfa4-b25f11f42901>.

23 <sup>3</sup> Olaf Storbeck and Dan McCrum, *KPMG widens review of Wirecard accounting*,  
24 The Financial Times (Nov. 6, 2019), <https://www.ft.com/content/e132cb98-0073-11ea-b7bc-f3fa4e77dd47>.

25 <sup>4</sup> Paul J. Davies, *Wirecard Chairman Steps Down From Embattled Payments*  
26 *Giant*, The Wall Street Journal (Jan. 12, 2020, 1:32 PM Eastern),  
27 [https://www.wsj.com/articles/wirecard-chairman-steps-down-from-embattled-](https://www.wsj.com/articles/wirecard-chairman-steps-down-from-embattled-payments-giant-11578768359)  
28 [payments-giant-11578768359](https://www.wsj.com/articles/wirecard-chairman-steps-down-from-embattled-payments-giant-11578768359).



findings,<sup>5,6,7,8</sup> Wirecard published the highly-anticipated report of KPMG's special audit of the Company's accounting practices.<sup>9</sup> KPMG's audit investigated allegations raised by both *The Financial Times* and the First Amended Complaint<sup>10</sup> concerning Wirecard's accounting of third party business acquisitions and partnerships, which historically represented a significant portion of Wirecard's revenues and profits.

<sup>5</sup> See Press Release, Wirecard, Wirecard: KPMG's special audit has no impact on the annual financial statements of the period under review in the areas of investigation India, Singapore and Merchant Cash Advance (Mar. 12, 2020), <https://www.dgap.de/dgap/News/corporate/wirecard-kpmgs-special-audit-has-impact-the-annual-financial-statements-the-period-under-review-the-areas-investigation-india-singapore-and-merchant-cash-advance-the-investigation-thirdparty-partner-business-still-ongoing/?newsID=1293373> (*previously available at* <https://ir.wirecard.com/websites/wc/English/3150/financial-news.html?newsID=1923069>) [ECF No. 74-4].

<sup>6</sup> Press Release, Wirecard, Wirecard AG: KPMG's special audit (Mar. 12, 2020), <https://ir.wirecard.com/websites/wirecard/English/5110/news-detail.html?newsID=1923069&fromID=5000>) [ECF No. 74-5].

<sup>7</sup> Press Release, Wirecard, Wirecard AG: KPMG special review lasts until April 27 2020. Analysis so far provides no evidence of balance sheet manipulation (Apr. 22, 2020), <https://ir.wirecard.com/websites/wirecard/English/5110/news-detail.html?newsID=1949977&fromID=1000> [ECF No. 74-6].

<sup>8</sup> Aishwarya Nair, *KPMG audit finds no manipulation in Wirecard's financial statements*, Reuters (Mar. 12, 2020), <https://www.reuters.com/article/us-wirecard-accounting/kpmg-audit-finds-no-manipulation-in-wirecards-financial-statements-idUSKBN20Z3UI> [ECF No. 74-7].

<sup>9</sup> Press Release, Wirecard, Wirecard AG: KPMG delivers report on special investigation (Apr. 28, 2020), <https://www.wirecard.com/company/press-releases/wirecard-ag-kpmg-delivers-report-on-special-investigation> (last accessed Apr. 30, 2020); KPMG report (Apr. 27, 2020), [https://www.wirecard.com/uploads/Bericht\\_Sonderpruefung\\_KPMG.pdf](https://www.wirecard.com/uploads/Bericht_Sonderpruefung_KPMG.pdf) [ECF No. 74-8].

<sup>10</sup> See First Am. Compl. (incorporated herein by reference), ECF No. 62 ¶¶ 108-127, 146-149, 153, 155.

1           7. KPMG reported that its investigation into Wirecard's practices had been  
2 obstructed by both Wirecard and its third party partners, and it was unable to trace or  
3 verify any of the underlying transactions for 2016 to 2018, the period it was  
4 investigating. According to KPMG, the Company's third-party partners refused to  
5 cooperate, rendering KPMG unable to confirm whether the Company's reported sales  
6 revenue existed or was correct.<sup>11</sup> Moreover, KPMG also reported that "Bank  
7 statements that prove the receipt of payments of about €1bn at escrow agent 1, were  
8 not submitted to us," and that its investigators "have not been able to conclusively  
9 assess the reliability of the bank confirmations" sent to Wirecard's longstanding  
10 auditor, E&Y. In some cases, KPMG had to rely on screenshots instead of original  
11 documents.<sup>12</sup>

12           8. In the hours following the release of the KPMG report, analysts and  
13 journalists quickly noted the report's alarming adverse findings. Most critically,  
14 KPMG was unable to verify over \$1 billion in transactions with third parties due to  
15 Wirecard's apparent refusal or inability to provide relevant data.<sup>13</sup> As KPMG's

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22           <sup>11</sup> Paul J. Davies, *Wirecard Shares Tumble as Questions Remain After Special*  
23 *Audit*, The Wall Street Journal (Apr. 28, 2020),  
24 <https://www.wsj.com/articles/wirecard-tumbles-as-questions-remain-after-special-audit-11588071316>.

25           <sup>12</sup> Olaf Storbeck and Dan McCrum, *KPMG unable to verify Wirecard's third-party*  
26 *profits*, The Financial Times (Apr. 28, 2020), <https://www.ft.com/content/56a2057c-b975-4965-b0cf-641b83ee0f82>.

27           <sup>13</sup> Sarah Syed and Eyk Henning, *Wirecard Says KPMG Could Not Review All Data*  
28 *for Audit*, Bloomberg (Apr. 28, 2020), <https://finance.yahoo.com/news/wirecard-says->

1 examination of the third party business was still ongoing, the publication of  
 2 Wirecard's annual results was postponed once again.<sup>14</sup> KPMG encountered delays and  
 3 obstacles to the investigation, including "an absence of original documents such as  
 4 bank records, a 'significant delay' in accessing material and difficulty in securing  
 5 interviews with key Wirecard employees."<sup>15</sup> One analyst described the report as  
 6 "anything but a clean bill of health," and added that the years 2016 to 2018 "remain a  
 7 black hole" that left Wirecard "wide open to further allegations."<sup>16</sup> The same day, on  
 8 April 28, 2020, a prominent investor published an open letter to Wirecard's  
 9 supervisory board stating that KPMG's inability to verify Wirecard's financial  
 10 statements raised additional questions over management's compliance with anti-  
 11 money laundering and know-your-customer laws, and called for the removal of CEO  
 12 Markus Braun.<sup>17</sup>

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 18  
 19 kpmg-could-not-061125248.html [ECF No. 74-9].

20 <sup>14</sup> Olaf Storbeck and Dan McCrum, *KPMG unable to verify Wirecard's third-party*  
 21 *profits*, Financial Times (Apr. 28, 2020), <https://www.ft.com/content/56a2057c-b975-4965-b0cf-641b83ee0f82> [ECF No. 74-10].

22 <sup>15</sup> *Id.*

23 <sup>16</sup> Patricia Uhlig, Hans Seidenstuecker and Aradhana Aravindan, *Wirecard Shares*  
 24 *Crash 26% After Critical KPMG Audit*, The New York Times (Apr. 28, 2020),  
 25 <https://www.nytimes.com/reuters/2020/04/28/technology/28reuters-wirecard-auditor-report.html> [ECF No. 74-11].

26 <sup>17</sup> Chris Hohn and Max Schroeder, Letter: *Audit of Wirecard by KPMG*, TCI Fund  
 27 Management Limited (Apr. 28, 2020),  
 28 <https://www.tcifund.com/files/corporateengagement/wirecard/TCI%20-%20Letter%20to%20Wirecard%2028%20April%202020.pdf> [ECF No. 74-12].

1           9.     On June 18, 2020, Wirecard announced that its auditor, Ernst & Young  
 2 GmbH, informed the Company that €1.9 billion (\$2.1 billion) (approximately a quarter  
 3 of the Company's consolidated balance sheet total could not be accounted for, and that  
 4 as result, the audit of its 2019 annual and consolidated financial statements would be  
 5 postponed indefinitely.<sup>18</sup>

6  
 7  
 8           10.    The next day, on June 19, 2020, the Company issued a brief statement  
 9 that Braun had resigned as CEO "with immediate effect" and that James Freis would  
 10 take his place as interim CEO.<sup>19</sup>

11  
 12           11.    On June 22, 2020, Wirecard admitted that the \$2 billion of cash on its  
 13 balance sheet probably does "not exist," that it had previously mischaracterized its  
 14 biggest source of profits, and that it was now trying to work out "whether, in which  
 15 manner and to what extent such business has actually been conducted for the benefit  
 16 of the company." The Company additionally withdrew its most recent financial results  
 17 and said other years' accounts may be inaccurate.<sup>20</sup> Felix Hufeld, the president of  
 18  
 19

20  
 21           <sup>18</sup> Press Release, Wirecard, Wirecard AG: Date for publication of annual and  
 22 consolidated financial statements 2019 delayed due to indications of presentation of  
 23 spurious balance confirmations (June 18, 2020),  
[https://ir.wirecard.com/websites/wirecard/English/5110/news-  
 detail.html?newsID=1984117&fromID=1000](https://ir.wirecard.com/websites/wirecard/English/5110/news-detail.html?newsID=1984117&fromID=1000).

24           <sup>19</sup> Charles Riley and Eoin McSweeney, *Wirecard CEO quits after \$2 billion goes*  
 25 *missing and fraud accusations fly*, CNN Business (June 19, 2020),  
<https://www.cnn.com/2020/06/19/tech/wirecard-fraud-tech-accounting/index.html>.

26           <sup>20</sup> Olaf Storbeck, Dan McCrum, and Stefania Palma, *Wirecard fights for survival as*  
 27 *it admits scale of fraud*, Financial Times (June 22, 2020),  
<https://www.ft.com/content/2581fda5-8c89-46b5-9acf-ba8a88d74d88>.

1 BaFin, Germany's financial regulator, described Wirecard's situation as "a complete  
2 disaster."<sup>21</sup>

3  
4 12. The same evening, then-former CEO Braun was arrested in Munich,  
5 following prosecutors' suspicion that Braun was inflating Wirecard's balance sheet  
6 and sales volume by faking income from transactions with so-called third-party  
7 acquirers, possibly in cooperation with other perpetrators, for the purpose of making  
8 the company appear financially strong and more attractive for investors and  
9 customers.<sup>22</sup> Wirecard also announced, without explanation, that it had terminated Jan  
10 Marsalek, its chief operating officer that it had previously suspended.<sup>23</sup>  
11  
12

13 13. On June 24, 2020, multiple news reports announced that Wirecard's  
14 former chief operating officer, Defendant Jan Marsalek, was missing and may have  
15 travelled to the Philippines. Menardo Guevarra, the Philippine secretary of justice,  
16  
17  
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19 <sup>21</sup> Paul J. Davies, *Wirecard Says Missing \$2 Billion Probably Doesn't Exist*, The  
20 Wall Street Journal (June 22, 2020), <https://www.wsj.com/articles/wirecards-missing-2-billion-probably-doesnt-exist-board-says-11592802732>; *see also* Charles Riley,  
21 *Wirecard says missing \$2 billion never existed. Its stock is down 85% in 3 days*, CNN  
22 Business (June 22, 2020), <https://www.cnn.com/2020/06/22/tech/wirecard-missing-money/index.html>.

23 <sup>22</sup> Karin Matussek and Sarah Syed, *Former Wirecard CEO Braun arrested over*  
24 *missing cash scandal*, Accounting Today (June 23, 2020),  
25 <https://www.accountingtoday.com/articles/former-wirecard-ceo-braun-arrested-over-missing-cash-scandal>.

26 <sup>23</sup> Steve Goldstein, *Wirecard says it's terminated COO Marsalek*, MarketWatch  
27 (June 22, 2020), <https://www.marketwatch.com/story/wirecard-says-its-terminated-coo-marsalek-2020-06-22>.  
28

1 reportedly announced an investigation into the Wirecard fraud by the Philippine  
2 National Bureau of Investigation.<sup>24</sup>

3  
4 14. On June 25, 2020, just days after \$2 billion was announced missing by its  
5 auditor, Wirecard filed for insolvency,<sup>25</sup> reportedly owing creditors almost \$4 billion.<sup>26</sup>

6 15. At the same time, E&Y, which audited Wirecard for a decade, was facing  
7 increased scrutiny for its failure to conduct routine audit procedures that would have  
8 revealed the fraud earlier. Among its scrutinized actions was E&Y's failure for more  
9 than three years to request crucial account information from a Singapore bank where  
10 Wirecard claimed it had up to €1bn in cash — a routine audit procedure that could  
11 have uncovered the vast fraud at Wirecard.<sup>27</sup> The German shareholders' association  
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13  
14  
15  
16

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17 <sup>24</sup> John Reed, Olaf Storbeck, and Stefania Palma, *Philippine authorities search for*  
18 *Wirecard's number two in fraud probe*, Financial Times (June 24, 2020),  
19 <https://www.ft.com/content/fa01a04f-8f35-4219-9aff-58f4ba58fd34>; *see also* Jörn  
20 Poltz and Karen Lema, *Philippines to investigate Wirecard's phantom billions*,  
21 Reuters (June 24, 2020), <https://www.reuters.com/article/us-wirecard-accounts/former-wirecard-ceo-freed-on-bail-in-missing-billions-case-idUSKBN23V0Y2>.

22 <sup>25</sup> Charles Riley, *Wirecard files for insolvency after ex-CEO arrested in \$2 billion*  
23 *scandal*, CNN Business (June 25, 2020),  
<https://www.cnn.com/2020/06/25/tech/wirecard-insolvency/index.html>.

24 <sup>26</sup> Arno Schuetze and John O'Donnell, *'The money's gone': Wirecard collapses*  
25 *owing \$4 billion*, Reuters (June 25, 2020), <https://news.yahoo.com/wirecard-files-insolvency-083819193.html>.

26 <sup>27</sup> Olaf Storbeck, Tabby Kinder, and Stefania Palma, *EY failed to check Wirecard*  
27 *bank statements for 3 years*, Financial Times (June 26, 2020),  
28 <https://www.ft.com/content/a9deb987-df70-4a72-bd41-47ed8942e83b>.



1 SdK announced that it had filed a criminal complaint against auditors at E&Y,  
2 targeting two current employees and one former employee of E&Y.<sup>28</sup>

3  
4 16. The rating agency Moody's slashed its ratings on Wirecard six notches to  
5 junk level, and has now withdrawn the ratings altogether due to "insufficient or  
6 otherwise inadequate information to support the maintenance of the ratings."<sup>29</sup>

7  
8 17. Now, with Wirecard's shares and its corresponding ADRs having  
9 collapsed, losing more than 90% of their value, Plaintiff and other Class members  
10 have suffered significant harm as a result of Defendants' wrongful acts and omissions.  
11 Moreover, if E&Y had done its job as an auditor properly, investors would not have  
12 relied on its "clean" audit opinions, nor would they have been defrauded of millions of  
13 dollars.  
14

## 15 II. JURISDICTION AND VENUE

16  
17 The Exchange Act claims asserted herein are asserted on behalf of purchasers of  
18 WCAGY and WRCDF shares in the United States and arise under §§ 10(b) and 20(a)  
19 of the Exchange Act (15 U.S.C. §§ 78j(b) and § 78t(a)) and Rule 10b-5 promulgated  
20 thereunder by the SEC (17 C.F.R. § 240.10b-5).  
21  
22  
23

24 <sup>28</sup> Ryan Browne, *Wirecard auditors face legal action after collapse of scandal-hit*  
25 *payments firm*, CNBC (June 26, 2020), [https://www.cnbc.com/2020/06/26/wirecard-](https://www.cnbc.com/2020/06/26/wirecard-investor-group-files-criminal-complaint-against-ey-auditors.html)  
investor-group-files-criminal-complaint-against-ey-auditors.html.

26 <sup>29</sup> *Moody's withdraws Wirecard ratings, says can't verify finances*, Reuters (June  
27 22, 2020), [https://www.reuters.com/article/wirecard-accounts-moodys/moodys-](https://www.reuters.com/article/wirecard-accounts-moodys/moodys-withdraws-wirecard-ratings-says-cant-verify-finances-idUSFWN2DX08B)  
withdraws-wirecard-ratings-says-cant-verify-finances-idUSFWN2DX08B.  
28

1           18. This Court has jurisdiction over the subject matter of the Exchange Act  
2 claims under 28 U.S.C. § 1331 and § 27 of the Exchange Act, 15 U.S.C. § 78aa.

3  
4           19. Wirecard is subject to personal jurisdiction in the United States and in  
5 this District because, as alleged in further detail below, Wirecard: (i) engaged in the  
6 fraudulent scheme and course of conduct described herein, including by engaging in  
7 fraud that arose from transactions and occurrences that took place in and caused  
8 foreseeable losses in the United States and this District; (ii) permitted and encouraged  
9 Wirecard's stock to be traded OTC in the U.S. to grow its American shareholder base;  
10 (iii) took further advantage of the benefits and protections of U.S. law by utilizing  
11 SEC Rule 12g3-2(b), which exempted Wirecard from registration under Exchange Act  
12 Section 12(g) so long as the Company, *inter alia*, electronically published reports  
13 made in its home country, including relevant annual reports, shareholder  
14 communications and other financial reports; (iv) issued false and/or misleading  
15 statements in connection with its Rule 12g3-2(b) exemption; and (v) marketed  
16 Wirecard's securities in the U.S., including at its "Capital Markets Day" conference in  
17 New York City, with the benefits and protections of this nation's securities laws.  
18 Individual Defendants Braun, Ley, Knoop, Marsalek, Steidl, and Matthias are subject  
19 to personal jurisdiction in this District because they: (i) are or were control persons of  
20 Wirecard; and (ii) each purposefully directed their activities as alleged herein toward  
21 the United States and this District.  
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1           20. E&Y is subject to general personal jurisdiction in this District because it  
2 engages in continuous and systematic general business contact within the United  
3 States by virtue of: (i) its registration with the PCAOB; (ii) signing the audit opinion  
4 for at least four U.S. exchange-listed companies (Centogene, BioNTech, Trivago, and  
5 Orion); and (iii) substantially participating in the audits of at least 30 U.S.  
6 multinational corporations, including McDonald's, Expedia, Texas Instruments,  
7 Archer Daniels Midland, and other high-profile U.S. companies.

10           21. E&Y is also subject to specific personal jurisdiction in the United States  
11 and in this District because, as alleged in further detail below, E&Y purposefully  
12 directed its activities at the United States and this District by preparing its audit  
13 opinions that it knew would be included in Wirecard's annual reports cited herein,  
14 which E&Y knew were translated into English and aimed at potential U.S. investors as  
15 required by Wirecard's Rule 12g3-2(b) exemption. E&Y knew, and agreed, that its  
16 name, reputation and imprimatur in these annual reports aimed at U.S. investors would  
17 be relied upon by these U.S. investors in deciding whether to purchase Wirecard  
18 ADRs. Further, the claims at issue in this actions arises out of or relates to E&Y's  
19 activities within the United States and the exercise of jurisdiction over the E&Y is  
20 reasonable under the circumstances.

25           22. Venue is proper in this judicial district pursuant to § 27 of the Exchange  
26 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b) and (c)(3) as the Company's business  
27 has an effect in this District, and because some of the fraudulent acts alleged  
28

1 misstatements alleged herein occurred or were related to transactions and occurrences  
2 that occurred in the United States and caused economic harm in the United States,  
3 including in this District.  
4

5 23. In connection with the acts, conduct and other wrongs alleged in this  
6 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of  
7 interstate commerce, including but not limited to, the United States mail, interstate  
8 telephone communications and the facilities of the national securities exchange.  
9

### 10 **III. PARTIES**

#### 11 **A. Plaintiff**

12 24. Plaintiff purchased the Company's securities at artificially inflated prices  
13 during the Class Period and was damaged upon the revelation of the alleged corrective  
14 disclosure. Plaintiff purchased 877 shares of WCAGY and 144 shares of WRCDF  
15 through transactions on the OTC Market in the United States from September 26,  
16 2017 to August 29, 2018, thereby acquiring an ownership interest in 582.5 shares of  
17 WDI common stock issued and authorized for sale by Wirecard. His PSLRA  
18 certification was previously filed with the Court and is incorporated by reference.  
19

20 25. The WCAGY ADRs reflecting Plaintiff's purchases and his beneficial  
21 ownership of the underlying WDI shares were issued by one of three Depository  
22 Banks, each located in New York City, within the United States. Contemporaneous  
23 with Plaintiff's purchase and issuance of the ADR, the 582.5 shares of WDI common  
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1 stock in which he acquired an ownership interest were deposited with the applicable  
2 Depository Bank, which held the shares for the benefit of Plaintiff.

3  
4 26. Plaintiff incurred irrevocable liability in the United States to purchase the  
5 WCAGY and WRCDF shares he acquired during the Class Period. The placement of  
6 the buy order, the payment of the purchase price, transfer of the title to the securities,  
7 and other related transactions took place within the territorial jurisdiction of the United  
8 States:  
9

- 10 a) Plaintiff initiated the purchase of WCAGY and WRCDF by placing the  
11 buy order through Plaintiff's broker, Fidelity, based in Boston,  
12 Massachusetts;  
13  
14 b) Plaintiff purchased WCAGY and WRCDF on the OTC Market using a  
15 trading platform based in the United States;  
16  
17 c) On information and belief based on the facts about the OTC Market  
18 alleged herein, the purchase order and trade confirmation were routed  
19 through servers located wholly within the United States;  
20  
21 d) The WCAGY ADRs reflecting Plaintiff's purchase and his ownership  
22 interest in the underlying WDI shares was issued by Citibank, JPMorgan,  
23 or BNY from their depository bank office in New York;  
24  
25 e) Plaintiff's purchases of WCAGY and WRCDF were settled on September  
26 28, 2017, October 16, 2017, and August 31, 2018 through payments  
27 totaling \$111,201.74 (including commission) in U.S. dollars disbursed  
28

1 from his personal bank account maintained by Excite Credit Union in San  
2 Jose, California; and

3  
4 f) As required by the ADR agreements filed with the SEC by Citibank,  
5 JPMorgan, and BNY (*see infra* § IV.B.2), a transfer of title establishing  
6 Plaintiff's beneficial ownership of WCAGY and WRCDF and the  
7 Wirecard shares on deposit on his behalf was recorded on the transfer  
8 books of the Depository Bank maintained in New York.  
9

10 **B. Defendant Wirecard**

11 27. Defendant Wirecard, a technology company, purports to provide  
12 outsourcing and white label solutions for electronic payment transactions worldwide.  
13 The Company is headquartered in Aschheim, Germany. Wirecard securities trade  
14 OTC under the ticker symbols "WCAGY" and "WRCDF," and in various Germany-  
15 based stock exchanges under the ticker symbol "WDI."  
16  
17

18 **C. Individual Defendants**

19 28. Defendant Markus Braun ("Braun") has served as the Company's Chief  
20 Executive Officer ("CEO") since 2002. Braun is a member of the Company's  
21 Management Board, and the Company's single largest shareholder.  
22

23 29. Defendant Burkhard Ley ("Ley") served as the Company's Chief  
24 Financial Officer ("CFO") from the beginning of the Class Period until December 31,  
25 2017. Ley served as a member of the Company's Management Board.  
26  
27  
28

1           30. Defendant Alexander von Knoop (“Knoop”) has served as the  
2 Company’s CFO since January 1, 2018. Knoop is a member of the Company’s  
3 Management Board.  
4

5           31. Defendant Jan Marsalek (“Marsalek”) has served as the Company’s Chief  
6 Operating Officer (“COO”) and a member of the Company’s Management Board  
7 since February 2010.  
8

9           32. Defendant Susanne Steidl (“Steidl”) serves on the Company’s  
10 Management Board and as Chief Product Officer (“CPO”), effective January 1, 2018.  
11

12           33. Defendant Wulf Matthias (“Matthias”) served as the Chairman of the  
13 Supervisory Board of the Company until January 11, 2020 and as a member of the  
14 Supervisory Board at all relevant times.  
15

16           34. Defendants Braun, Ley, Knoop, Marsalek, Steidl, and Matthias are herein  
17 referred to as the “Individual Defendants.”  
18

19           35. Each of the Individual Defendants:

- 20           a) directly participated in the management of the Company;  
21           b) was directly involved in the day-to-day operations of the Company  
22 at the highest levels;  
23           c) was privy to confidential proprietary information concerning the  
24 Company and its business and operations;  
25  
26  
27  
28

1           d)     was directly or indirectly involved in drafting, producing,  
2           reviewing and/or disseminating the false and misleading statements and  
3           information alleged herein;  
4

5           e)     was directly or indirectly involved in the oversight or  
6           implementation of the Company's internal controls;  
7

8           f)     was aware of or recklessly disregarded the fact that the false and  
9           misleading statements were being issued concerning the Company; and/or  
10

11           g)     approved or ratified these statements in violation of the federal  
12           securities laws.

13           36.    The Company is liable for the acts of the Individual Defendants and its  
14           employees under the doctrine of *respondeat superior* and common law principles of  
15           agency because all of the wrongful acts complained of herein were carried out within  
16           the scope of their employment.  
17

18           37.    The scienter of the Individual Defendants and other employees and agents  
19           of the Company is similarly imputed to the Company under *respondeat superior* and  
20           agency principles.  
21

22           38.    The Company and the Individual Defendants are referred to herein,  
23           collectively, as the "Defendants."  
24

25           **D.    Auditor Defendant**

26           39.    Defendant Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft  
27           ("E&Y") served as the Company's independent auditor for approximately 10 years  
28

1 and during the Class Period. E&Y’s audit opinions were incorporated into the  
2 Company’s annual and quarterly reports during the Class Period.

3  
4 40. E&Y is registered with, and has been assigned I.D. Number 1251 by the  
5 United States Public Company Accounting Oversight Board (“PCAOB”).

6  
7 **IV. WIRECARD SECURITIES AT ISSUE**

8 41. Each of the Class members acquired beneficial ownership interests in  
9 Wirecard through the purchase of one or more of the following securities: WDI,  
10 WRCDF and/or WCAGY (all as further described and defined below).

11  
12 **A. Securities Granting Ownership Interests in Common Stock Issued and  
Authorized for Sale by Wirecard**

13 42. Wirecard’s common stock is publicly traded on the Frankfurt Stock  
14 Exchange, Börse Stuttgart, and Tradegate Exchange stock exchanges in Germany  
15 under the ticker symbol “WDI.”

16  
17 43. Wirecard common stock is also sold in the United States as “F-shares”  
18 under the ticker “WRCDF.” An F-share is a foreign security denominated in U.S.  
19 currency, and traded on the U.S. OTC Market based in New York. One share of  
20 WRCDF represents ownership of one share of Wirecard common stock sold under the  
21 ticker symbol WDI in Germany. An F-share is established in the U.S. when a broker-  
22 dealer files with the Financial Industry Regulatory Authority (“FINRA”) to create a  
23 ticker symbol in order to facilitate reporting trades in the U.S. in the company’s  
24  
25  
26  
27  
28

1 security. OTC Markets Group, Inc., the operator of the OTC Markets, identifies  
2 WRCDF as “Ordinary Shares” on its website.<sup>30</sup>

3  
4 44. Wirecard common stock is also packaged and sold on the OTC Markets  
5 in the United States under the ticker symbol “WCAGY.” WCAGY is an American  
6 Depositary Receipt (“ADR”) reflecting ownership of shares of WDI common stock  
7 that have been deposited with or are otherwise controlled by a depositary institution in  
8 the United States and held for the benefit of the WCAGY purchaser. One share of  
9 WCAGY conferred on Class Period purchasers a beneficial ownership interest in 0.5  
10 shares of Wirecard WDI common stock that had been authorized for sale by Wirecard.  
11  
12 OTC Markets Group identifies WCAGY as an ADR on its website.<sup>31</sup>

13  
14 45. Purchasers of WCAGY and WRCDF shares on the OTC Markets become  
15 irrevocably liable to purchase the shares at the stated price at the time their purchase  
16 order is placed.

17  
18 46. As of the first day of the Class Period, Wirecard had issued and  
19 authorized the sale of more than 100 million shares of common stock.<sup>32</sup>  
20  
21  
22

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23 <sup>30</sup> See Wirecard Overview, OTC Markets,  
24 <https://www.otcmarkets.com/stock/WRCDF/overview> (last visited Feb. 13, 2020).

25 <sup>31</sup> See Wirecard Filings and Disclosure, OTC Markets,  
26 <https://www.otcmarkets.com/stock/WCAGY/disclosure> (last visited Feb.13, 2020).

27 <sup>32</sup> See *Connected Commerce: Annual Report 2016*, Wirecard,  
28 <https://ir.wirecard.com/download/companies/wirecard/Annual%20Reports/DE0007472060-JA-2016-EQ-E-03.pdf> (last visited Feb. 14, 2020).



1           47. Only shares of common stock that had been issued and authorized by  
2 Wirecard were available to be sold as ADRs or F-shares in the United States under the  
3 ticker symbols WRCDF and WCAGY (*see infra* § IV.B.).  
4

5           48. Both WRCDF and WCAGY shares are bought and sold at market prices  
6 that are set to equal the trading price of WDI on the Frankfurt Stock Exchange, Börse  
7 Stuttgart, and Tradegate Exchange stock exchanges at the time of the transaction,  
8 converted to U.S. dollars at the then-current foreign currency exchange rate (USD to  
9 Euros). Thus, events that impact the trading price of WDI shares on the Frankfurt  
10 Stock Exchange, Börse Stuttgart, and Tradegate Exchange stock exchanges have a  
11 contemporaneous impact on the trading price of WRCDF and WCAGY shares sold on  
12 the OTC Markets in the United States.  
13  
14  
15

16 **B. Establishment of and Trading in Wirecard ADRs**

17 **1. Nature of an ADR**

18           49. The sale of ADRs was authorized by Congress in 1927, as a way to  
19 permit American investors to diversify their portfolios by acquiring shares of foreign  
20 companies without the necessity of purchasing those shares on foreign exchanges  
21 using foreign currency. The SEC has explained that “ADRs allow U.S. investors to  
22 invest in non-U.S. companies and give non-U.S. companies easier access to the U.S.  
23 capital markets.”<sup>33</sup>  
24  
25  
26

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27 <sup>33</sup> Ex. 5, SEC Office of Investor Education and Advocacy, Investor Bulletin:  
28 American Depositary Receipts (Aug. 2012) at 1 (“SEC ADR Bulletin”).

1           50. WCAGY and other ADRs are sold in the United States pursuant to  
2 regulations adopted by the SEC, including SEC Rule 12g3-2(b), 17 C.F.R. §  
3 240.12g3-2(b).  
4

5           51. The purchase of an ADR is equivalent to the purchase of the underlying  
6 foreign securities (here, WDI shares issued by Wirecard) which are held by the  
7 depositary banks for the benefit of the purchasers of the ADR (here, WCAGY). As  
8 explained by the SEC:  
9

10                   An ADR is a negotiable certificate that evidences an  
11 ownership interest in American Depositary Shares (“ADSs”)  
12 which, in turn, represent an interest in the shares of a non-U.S.  
13 company that have been deposited with a U.S. bank. It is  
14 similar to a stock certificate representing shares of stock. The  
15 terms ADR and ADS are often used interchangeably by  
16 market participants. ADRs trade in U.S. dollars and clear  
through U.S. settlement systems, allowing ADR holders to  
avoid having to transact in a foreign currency.

17           SEC ADR Bulletin at 1.

18           52. Thus, ADRs, including WCAGY, are securities that represent specific  
19 shares of common stock of foreign issuers that have been deposited with a U.S. bank.  
20 This method of sale of foreign shares in the United States has historically been  
21 referred to in the industry as a “hat check” model, because an ADR is akin to the  
22 receipt provided to a customer who left his hat for safekeeping at the door of a  
23 nightclub or restaurant. The hat, in turn, is akin to the foreign shares, which is the  
24 article that the customer (investor) has purchased and deposited for safekeeping.  
25  
26  
27  
28

53. SEC regulations, including SEC Rule 12g3-2(b), require depositary institutions to acquire and hold shares of foreign securities in an amount equal to the number of those shares sold as ADRs in the United States, based on the ratio of foreign-to-domestic shares stated in the ADR.<sup>34</sup> The underlying shares of common stock must be deposited with the depositary institution by the time the ADR transaction is cleared, thereby removing them from the market until the ADR is cancelled or sold. Thus, the number of foreign shares that can be sold as ADRs in the United States is limited by the number of shares that have been issued and authorized for sale by the foreign issuer. An ADR program has no ability to expand ownership interests in the foreign issuer beyond the limits established by that issuer (*see infra* § IV.B.2.).

54. ADRs may be either “sponsored” or “unsponsored.” Sponsored ADRs are established pursuant to a contract signed by the foreign issuer. Unsponsored ADRs are established by one or more depositary banks by filing a Form F-6 with the SEC. Unsponsored ADRs may only be established where, *inter alia*: (i) no sponsored ADR program exists; (ii) the foreign issuer is listed on a regulated foreign exchange; (iii) the foreign issuer provides regular financial reports and other investor information in

<sup>34</sup> For example, during the Class Period WCAGY ADRs were issued at a ratio of .5 foreign shares (WDI) for each ADS. Thus, for every 1 million shares of WCAGY sold, the depositary banks were required to hold 500,000 shares of WDI for the benefit of the purchasers.

English, and on a website that is generally available to U.S. investors; and (iv) the holder of the ADR is entitled to receive the corresponding deposited shares issued by the foreign company on demand at any time.

55. Un-sponsored ADRs are not sold without the express or implied consent of the foreign issuer. As described in more detail below, each of the depositary institutions involved in the sale of unsponsored ADRs has a regular practice of contacting foreign issuers before an unsponsored program is established, and will generally not establish or sell unsponsored ADRs where the foreign issuer refuses to consent.

## 2. Establishment of the WCAGY ADR Program

56. WCAGY is an unsponsored ADR.

57. WCAGY shares are denominated in U.S. dollars, cleared through U.S. settlement systems, and listed alongside U.S. stocks.

58. Three depositary institutions have filed Forms F-6 with the SEC to register and issue WCAGY ADRs in the United States: Citibank, N.A. (“Citibank”) (filed Sept. 18, 2013); The Bank of New York Mellon (“BNY”) (filed Oct. 2, 2019); and JPMorgan Chase Bank, N.A. (“JPMorgan”) (filed Nov. 22, 2019).<sup>35</sup> Exs. 1-4.

59. The number of WCAGY shares that are available for sale in the United States is limited by the number of WDI shares that have been issued and authorized

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<sup>35</sup> Citibank, BNY, and JPMorgan are collectively referred to herein as the “Depositary Banks.”

1 for sale by Wirecard, as explained above. Depositary banks are prohibited from selling  
2 WCAGY shares that are not supported by underlying shares of WDI stock deposited  
3 and held by the depositary. Thus, as with ADRs generally, the Depositary Banks here  
4 have no ability to create or issue additional securities or shares of Wirecard beyond the  
5 number of WDI shares that have been specifically issued and authorized for sale by  
6 the Company.  
7  
8

9 60. The Forms F-6 filed by each of the Depositary Banks identify the location  
10 of its depository as a physical address in New York City, New York, within the  
11 territory of the United States.  
12

13 61. Each Form F-6 includes a form of agreement between the Depositary  
14 Bank and the holders of WCAGY shares (a “Form of ADR”). Each such agreement  
15 filed by the Depositary Banks states that it is to be interpreted under the laws of New  
16 York, within the United States.  
17

18 62. Each Form of ADR contains terms:  
19

- 20 a) with the bank for the benefit of the purchaser;
- 21 b) obligating the bank to hold the deposited WDI shares for the benefit of  
22 the purchaser;
- 23 c) requiring the bank to deliver the WDI shares to the WCAGY purchaser  
24 immediately upon tender of their ADR to the bank;  
25  
26  
27  
28

- 1 d) affirming that Wirecard publishes financial and other information  
2 required by SEC Rule 12g3-2(b) in English on a website generally  
3 available to the public;  
4
- 5 e) undertaking to maintain transfer books at the bank's New York City  
6 office that list the owners of the ADRs to record transfers of title in those  
7 books upon the purchase or sale of an ADR, and to make those books  
8 available for inspection during regular business hours;  
9
- 10 f) obligating the bank to distribute dividends and other distributions of cash  
11 or rights associated with the WDI shares to the WCAGY purchaser on  
12 whose behalf those shares are being held; and  
13
- 14 g) providing for the reimbursement of certain expenses and fees that may be  
15 charged by the bank for its custodial and other services provided under  
16 the agreement.  
17

18 63. Purchasers of WCAGY have the right under the Form of ADR filed by  
19 the Depositary Banks to tender their ADRs to the Depositary Bank and receive the  
20 underlying WDI shares in return. The Forms of ADR attached to the Forms F-6 filed  
21 by each of the Depositary Banks require that, to obtain their underlying WDI shares,  
22 purchasers must tender their receipt evidencing the purchase of ADRs (i.e., their  
23 ADR), at the Depositary Bank's office in New York.  
24  
25

26 64. Each Form of ADR attached to the Forms F-6 filed by the Depositary  
27 Banks contains the following clause, or a substantially identical clause:  
28

1           Until the surrender of this Receipt in accordance with the  
2           terms hereof, the Depositary or its agent will keep a register  
3           for the registration and registration of transfers of Receipts  
4           and where the Holders of Receipts may, during regular  
5           business hours, inspect the transfer books or the list of Holders  
6           of Receipts as maintained by the Depositary. The transfer of  
7           this Receipt is registrable on the transfer books of the  
8           Depositary by the Holder hereof in person or by duly  
9           authorized attorney, upon surrender of this Receipt properly  
10          endorsed for transfer or accompanied by proper instruments  
11          of transfer and payment of funds sufficient to pay the fees and  
12          expenses of the Depositary and any applicable taxes and other  
13          governmental charges and upon compliance with such  
14          regulations, if any, as the Depositary may establish for such  
15          purpose.

16           65. Consistent with the economic reality of the transaction, the Form of ADR  
17          filed with the SEC by each of the Depositary Banks reflects that purchasers are being  
18          provided with a receipt reflecting their purchase and ownership of shares of common  
19          stock – i.e., WDI – that have been authorized and issued by Wirecard. *See* Ex. 1 (Form  
20          F-6, at Exhibit (a)) (Citibank Form of ADR “Evidencing **American Depositary**  
21          **Shares Representing Shares of Common Stock of Wirecard AG**”); Ex. 3 (Form F-  
22          6 Exhibit 1) (BNY Form of ADR “Statement of Terms and Conditions with Respect  
23          To **American Depositary Shares Representing Common Stock of Wirecard AG**”);  
24          Exs. 2 (Form F-6, at Exhibit (a)); Ex. 4 (Form F-6, at Exhibit (a)) (JPMorgan Forms of  
25          ADR “Evidencing **American Depositary Shares Representing Ordinary Shares of**  
26          **Wirecard AG**”).

1           **3. Wirecard's Consent to Sale of WCAGY**

2           66. It is a regular practice and custom in the industry for a depository  
3 institution to notify the foreign issuer of securities of its intent to register those  
4 securities for sale as unsponsored ADRs in the United States, and to obtain its  
5 affirmative or implied consent to the sale of those securities before an unsponsored  
6 ADR is sold. If a foreign issuer refuses to consent or otherwise objects to the  
7 establishment of an unsponsored ADR program, a depository institution ordinarily will  
8 not proceed to register or sell those shares as unsponsored ADRs.  
9

10  
11           67. For example, in a regulatory comment letter sent to the SEC on April 21,  
12 2008 addressing the question of whether proposed regulations should require formal  
13 consent from foreign issuers before an unsponsored ADR program is established,  
14 Deutsche Bank, one of the primary ADR depository banks in the U.S., asserted that  
15 such a requirement was unnecessary because: "in practice depository banks obtain the  
16 issuer's consent before establishing an unsponsored ADR program." The bank further  
17 explained:  
18  
19

20  
21           In our experience, foreign issuers are often willing to allow a  
22 depository bank to establish an unsponsored ADR program  
23 but are reluctant to memorialize this in writing. We believe  
24 that, given the adequacy of the current environment of self-  
25 regulation, the protection provided issuers by the ability to  
26 affirmatively object to the establishment of an unsponsored  
27 ADR program and the benefit provided to U.S. investors by  
28 *unsponsored ADR programs, consent should be implied by  
a lack of affirmative objection by the issuer.*



68. Other commentators who regularly advise entities involved in ADR transactions have made similar observations. In an October 2008 article discussing the SEC’s adoption of regulations permitting the sale of unsponsored ADRs, the law firm of Paul, Weiss noted, for example, that a “depository typically requests a letter of non-objection from the issuer before establishing an unsponsored program.”<sup>36</sup> Similar observations were made in articles by other law firms regularly involved in advising ADR issuers and investors following the Ninth Circuit’s decision in this action.<sup>37</sup>

69. Based on the foregoing information and belief, one or more of the Depositary Banks, consistent with their business practices and the custom in the industry, contacted Wirecard before the WCAGY ADS program was established and before any WCAGY shares were registered or sold in the United States. On the same information and belief, during those contacts the Depositary Banks: (i) provided

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<sup>36</sup> Paul, Weiss, Rifind, Wharton & Garrison LLP, *SEC Amends Form F-6, which has Implications for Foreign Private Issuers that do not have ADR Programs* (October 2008), <https://www.paulweiss.com/media/1053659/3nov08-f-6.pdf>.

<sup>37</sup> See Linklaters, *Ninth Circuit Holds that Rule 10b-5 Could Apply to Unsponsored ADRs Traded Over the Counter* (Aug. 3, 2018) <https://www.lexology.com/library/detail.aspx?g=6f9186bf-77e5-4bf0-a772-7ede4a9628dd> (“Although an unsponsored facility may be established without the consent of the issuer, the depository will typically request a letter of non-objection from the issuer before establishing the program in order to maintain a good relationship with the issuer.”); Sullivan & Cromwell, *Ninth Circuit Holds that Non-U.S. Issuers Can Be Liable in U.S. for Unsponsored American Depositary Receipt Facility* (July 30, 2018) at 2, <https://www.sullcrom.com/files/upload/SC-Publication-Ninth-Circuit-Upholds-Lawsuit-Over-Unsponsored-American-Depositary-Receipts.pdf> (“depository banks frequently seek letters of non-objection from the non-U.S. issuer before establishing an unsponsored ADR facility”).

1 Wirecard with an opportunity to object to and prevent the establishment of such  
2 program; (ii) obtained a letter of non-objection or other evidence of consent from  
3 Wirecard; and/or (iii) took other actions intended to obtain Wirecard's consent to the  
4 sale of unsponsored ADRs in the United States or from which such consent could  
5 reasonably be implied.  
6

7  
8 70. Wirecard either provided its affirmative consent to the sale of its WDI  
9 shares as ADRs in the United States or its consent may be implied under the  
10 circumstances.  
11

12 71. Wirecard did not make any affirmative objection to, or take any other  
13 action reasonably calculated to prevent, the sale of its common stock as unsponsored  
14 ADRs in the United States, despite having been provided with an opportunity to do so.  
15

16 72. WCAGY would not have been offered for sale in the United States absent  
17 Wirecard's affirmative or implied consent to the sale of unsponsored ADRs in the  
18 United States.  
19

20 73. The following facts lend additional support for finding that Wirecard  
21 either affirmatively consented to or participated in the sale of its WDI stock or that  
22 such consent and participation may reasonably be implied from its actions.  
23

- 24 a) Wirecard published its quarterly and annual results in English, as required  
25 to support the sale of unsponsored ADRs in the United States. Had  
26 Wirecard not published that information in English, or ceased such  
27 publication, the sale of its WDI stock as ADRs would have been  
28

1 prohibited and Wirecard would have been required to register its common  
2 stock pursuant to § 12(g) of the Exchange Act, 15 U.S.C. § 78L(g).

3  
4 b) It is unlikely that the Depositary Banks or brokers assisting with  
5 transactions in WCAGY or WRCDF, individually or collectively, could  
6 have obtained a sufficient number of WDI shares to support sales of those  
7 securities without the participation, assistance or consent of Wirecard.  
8

9 c) The Depositary Banks' substantial holdings in Wirecard common stock  
10 also make it unlikely that they would have established an unsponsored  
11 ADR program for the sale of WCAGY shares without the consent, or  
12 over the objection, of Wirecard.  
13

14 **C. The OTC Market**

15 74. WCAGY and WRCDF shares trade on the Pink market, which is part of  
16 the OTC Markets. The OTC Markets and the Pink market are both located in the  
17 United States, and are operated by OTC Markets Group, which is based in New York  
18 City and are regulated by FINRA and the U.S. Securities and Exchange Commission.  
19

20 75. Trades on the OTC Markets are accomplished through the OTC Link  
21 Alternative Trading System ("ATS") registered with the SEC and regulated by both  
22 the SEC and FINRA. OTC Link ATS allows broker-dealers to quote any OTC equity  
23 security eligible for quoting under SEC Rule 15c2-11, 17 C.F.R. § 240.15c2-11. There  
24 are thousands of securities quoted on the OTC Link ATS. OTC Link ATS delivers  
25  
26  
27  
28

1 trade messages electronically, allowing subscribers to execute, negotiate, or decline  
2 trade messages.

3  
4 76. The SEC maintains a website containing lists of alternative trading  
5 systems, which states: “An ATS is a trading system that meets the definition of  
6 ‘exchange’ under federal securities laws but is not required to register as a national  
7 securities exchange . . . .”<sup>38</sup> By rule, the SEC has exempted ATSs from the definition  
8 of “exchange” only for the purpose of relieving ATSs from the requirement to register  
9 as a national exchange subject to § 6 of the Exchange Act, 15 U.S.C. § 78f.  
10

11  
12 77. In its 2018 annual report to investors, OTC Markets Group described  
13 OTC Link as follows:

14 OTC Link ATS offers our broker-dealer subscribers a fully-  
15 attributable, network-based model for quoting and facilitating  
16 transactions in OTC equity securities and serves a diverse  
17 community of FINRA member broker-dealers that operate as  
18 market makers, agency brokers and ATSs, including  
19 Electronic Communication Networks (“ECNs”). OTC Link  
20 ATS provides a suite of quotation and trade-messaging  
21 services offering broker-dealers control of trades and choice  
22 of counterparties so they can efficiently provide best  
23 execution, attract order flow, and comply with FINRA and  
24 SEC regulations. Unlike traditional exchanges and matching  
25 engines, OTC Link ATS is not an intermediary. Rather, OTC  
26 Link ATS delivers trade messages electronically, allowing  
27 subscribers to execute or negotiate trades.

28 OTC Link ECN functions as a matching engine and router for  
certain OTC securities. OTC Link ECN complements OTC  
Link ATS by providing FINRA registered broker-dealer

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<sup>38</sup> Alternative Trading System (“ATS”) List, U.S. Securities and Exchange  
Commission, <https://www.sec.gov/foia/docs/atstlist.htm> (last visited Feb. 13, 2020).

1 subscribers with anonymous order matching functionality.  
 2 OTC Link ECN acts as an agency intermediary in relation to  
 3 all transactions executed on the ECN's platform. When orders  
 4 do not match internally on OTC Link ECN's matching engine,  
 5 they are routed to an interdealer quotation system where they  
 6 may appear as quotes using the market participant identifier  
 7 "OTCX".

8 [...]

9 OTC Markets Group Inc. ("OTC Markets Group" or the  
 10 "Company") (OTCQX: OTCM) operates the OTCQX® Best  
 11 Market; the OTCQB® Venture Market; and the Pink® Open  
 12 Market for 10,000 U.S. and global securities. Through OTC  
 13 Link® ATS and OTC Link ECN, each a Securities and  
 14 Exchange Commission ("SEC") registered Alternative  
 15 Trading System ("ATS") operated by the Company's wholly-  
 16 owned subsidiary OTC Link LLC, a Financial Industry  
 17 Regulatory Authority, Inc. ("FINRA") and SEC registered  
 18 broker-dealer, the Company enables investors to easily trade  
 19 through the broker of their choice and empowers companies  
 20 to improve the quality and availability of information for their  
 21 investors.

22 The Company has three business lines: OTC Link, Market  
 23 Data Licensing and Corporate Services.

- 24 • OTC Link – OTC Link LLC operates two ATSs. OTC  
 25 Link ATS and OTC Link ECN, which provide trading  
 26 services to FINRA member broker-dealer subscribers.
- 27 • Market Data Licensing – OTC Markets Group provides  
 28 real-time data, delayed and historical market data,  
 company financial data, security master data, corporate  
 reference data and compliance data for securities traded  
 on the OTCQX, OTCQB and Pink markets. The Market  
 Data Licensing business line provides investors,  
 traders, institutions and regulators with a suite of  
 enterprise and user market data licenses, offered via  
 direct or extranet connectivity, through third party  
 market data redistributors or Order Management  
 Systems ("OMS").

- Corporate Services – OTC Markets Group operates the OTCQX Best Market and the OTCQB Venture Market and offers companies a suite of services that are designed to create a better informational experience for investors by facilitating public disclosure and communication with investors, promoting greater transparency and allowing companies to demonstrate regulatory compliance and mitigate market risk. These services include the OTC Disclosure & News Service, Real-Time Level 2 Quote Display and Blue Sky Monitoring Service.

78. The OTC Link ATS permits subscribing broker-dealers to view and publish quotes and negotiate trades in Pink-listed securities, including WCAGY and WRCDF. OTC Link ATS is described on OTC Markets Group’s website as an “electronic messaging system” where “[t]raders have direct access to send, execute, negotiate or decline trade messages with increased efficiency and speed.”<sup>39</sup> OTC Link ATS is operated by OTC Link LLC, located in New York City.<sup>40</sup>

79. Broker-dealers can access OTC Link through OTC Dealer, which OTC Markets Group describes as a “high-performance, real-time, front-end application [that] provides a consolidated quotation, trading and information system to attract and access market liquidity.”<sup>41</sup>

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<sup>39</sup> OTC Link ATS Overview, OTC Markets, <https://www.otcmarkets.com/otc-link/overview> (last visited Feb. 13, 2020).

<sup>40</sup> OTC Markets Group Inc. 2018 Annual Report, <https://backend.otcmarkets.com/otcapi/company/financial-report/213065/content> (last visited Feb. 13, 2020).

<sup>41</sup> OTC Link ATS Overview, *supra* note 14.

1           80. As of December 31, 2018, 91 broker-dealers subscribed to our OTC Link  
2     ATS.<sup>42</sup>

3  
4           81. All of the broker-dealers listed in the OTC Market Group's online  
5     directory of broker dealers are located in the United States.<sup>43</sup>

6           82. According to the company profile posted by Bloomberg, "OTC Link  
7     serves clients in the United States."<sup>44</sup>

8  
9           83. Trades on the OTC Markets are arranged through the broker-dealers who  
10    have subscribed to OTC Link ATS. The broker-dealers may execute the trade  
11    internally or externally through market or limit offers posted on OTC Link ATS.  
12    Completed trades are reported, cleared and settled by the broker-dealers involved in  
13    the transaction. Trades on the OTC Markets are deemed complete upon the delivery of  
14    funds by the buyer and delivery of securities by the seller.  
15  
16

17          84. FINRA members are prohibited from publishing quotations in any  
18    security unless the member is prepared to purchase or sell at the price quote and under  
19    the conditions stated at the time the offer is posted. FINRA, Rule 5220 (eff. Jul. 9,  
20  
21  
22  
23

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24       <sup>42</sup> *Id.*

25       <sup>43</sup> Broker-Dealer Directory, OTC Markets, <https://www.otcmarkets.com/otc-link/broker-dealer-directory> (last visited Feb. 13, 2020).

26       <sup>44</sup> OTC Link LLC Company Profile, Bloomberg,  
27    <https://www.bloomberg.com/profile/company/0719514D:US> (last visited Feb. 13,  
28    2020).



1 2012) (“Rule 5220”).<sup>45</sup> The OTC Markets Group further describes Rule 5220 on its  
2 website as follows: “Plain speak: Broker-dealers must honor their posted quotes.”<sup>46</sup>  
3

4 85. Transactions in WCAGY and WRCDF were conducted via servers and  
5 facilities located wholly within the United States.

6 86. According to OTC Markets Group’s FY16, FY17 and FY18 annual  
7 reports, its operations during the Class Period were conducted from offices located in  
8 New York City and Washington D.C. According to OTC Markets Group’s website,  
9 brokers access OTC Dealer and OTC Fix through one of five extranet providers in the  
10 United States: BT Radianz, TNS, Century Link, NYSE Technologies Connectivity  
11 Inc. (SFTI), or Options-IT.  
12

13 87. ADRs are issued and shares of Wirecard common stock (WDI) required  
14 to support the sale of WCAGY shares are maintained by depositaries located in New  
15 York, where transfers of interests in those securities are recorded.  
16

17 88. As a result of the foregoing, purchasers and sellers of and WRCDF incur  
18 irrevocable liability in the United States to complete transactions executed through the  
19 OTC Link ATS.  
20  
21  
22  
23

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24 <sup>45</sup> 5220. Offers at Stated Prices Rules & Guidance, Finra,  
25 <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5220> (last visited Feb. 13,  
26 2020).

27 <sup>46</sup> Regulation Governing Trading in OTCQX, OTCQB and Pink Markets, OTC  
28 Markets, <https://www.otcm Markets.com/learn/market-101/regulation> (last visited Feb.  
13, 2020).



## V. BACKGROUND INFORMATION

### A. Wirecard's Business

89. Wirecard is a “payment processor” that helps websites collect credit card payments from customers. Wirecard acts as a so-called “Acquirer,” an entity that collects money from card issuers and distributes it to merchants.

90. Wirecard operates its business through a worldwide network of subsidiaries and affiliated companies whose activities and financial data were misleadingly represented by the Company’s top executives during the Class Period, as described below. During the Class Period, Wirecard treated its subsidiaries and business units as mere instrumentalities of itself, ordering them to improperly recognize assets in order to meet profit and valuation expectations that Wirecard had established even knowing the targets could not be attained without falsifying financial results. Wirecard used the phrase “Wirecard Group” throughout its public reports and filings to refer to Wirecard and its consolidated subsidiaries.

91. In Europe, Wirecard owns a bank licensed by Visa and MasterCard to act as an acquirer. But because it lacks similar licenses to act as an acquirer in other countries, Wirecard has said it uses third party acquirers (“TPAs”) to help transact around half the payments it processes. Wirecard claims that it coordinated such third-party business primarily through Dubai, Dublin and Munich, where three of the group’s largest and most profitable subsidiaries are based.

1           92. The Company regularly communicates with investors through the  
2 periodic publication of English-language quarterly and annual reports, and in press  
3 releases, conference calls, and investor and analyst presentations. During the Class  
4 Period, Wirecard maintained an English-language corporate website at  
5 <http://www.wirecard.com>, on which it established an Investor Relations section where  
6 its quarterly and annual reports, press releases, conference call transcripts, corporate  
7 profiles, descriptions of its business, and other information about the Company is  
8 made available to investors. Wirecard's annual and quarterly reports included detailed  
9 financial information presenting data in both Euros and U.S. currency.  
10

11  
12  
13           93. On an ongoing basis and for each fiscal year, Wirecard published on its  
14 Internet website English-language versions of its annual and quarterly reports,  
15 earnings and other press releases, investor presentations, governance and business  
16 policies, and other information reflecting the Company's results of operations or  
17 financial condition, changes in business, acquisitions or dispositions of assets,  
18 changes in management or control, and other information required to maintain  
19 compliance with SEC Rule 12g3-2(b), 17 C.F.R. § 240.12g3-2(b) (*see* ¶¶ 7, 43, 46,  
20 55).  
21  
22  
23

24           94. According to the Company's 2018 Annual Report, the Company employs  
25 at least 100 employees in its United States-based subsidiary, Wirecard North America,  
26 Inc. The Company's 2018 Annual Report also states that in June 2016, Wirecard  
27 acquired Citi Prepaid Card Services, a business that "has already issued more than  
28

1 2,500 card programmes for large international companies, primarily on the North  
2 American market.”

3  
4 95. Wirecard maintained a substantial presence in the United States through  
5 its business activities, operations, and corporate representatives in the United States.  
6 During the Class Period, Wirecard’s Wirecard North America, Inc. was a corporation  
7 organized under U.S. law with its headquarters in Pennsylvania. Wirecard North  
8 America, Inc. is a subsidiary of Wirecard, with all of its equity effectively held by  
9 Wirecard.  
10

11  
12 **B. Wirecard’s Growth and History**

13 96. Wirecard was founded in 1999 in a suburb of Munich, Germany.

14 97. In 2002, Defendant Braun (a former KPMG consultant) took over as chief  
15 executive officer and merged Wirecard with Electronic Business Systems.  
16

17 98. In 2005, Wirecard was listed on the Frankfurt stock market through a  
18 reverse merger with a defunct call centre group, a tactic often employed by companies  
19 to avoid the scrutiny of an initial public offering. By this time, Wirecard had 323  
20 employees and the core of its business was managing payments for online gambling  
21 and pornography websites.  
22

23 99. Although initially known for processing payments for online gambling  
24 and pornography websites, Wirecard purchased a bank in 2006, and evolved into a  
25 full-service payments operation.  
26  
27  
28

100. Wirecard has grown by buying smaller payment processing businesses and groups of customers, including a 2017 deal to take on 20,000 merchant clients of Citibank, spread over 11 Asia-Pacific countries.

101. The Company has also expanded its geographic reach by working with various Third Party Acquirer (“TPA”) firms with whom it partners when Wirecard lacks the experience or license to process payments itself.

## **VI. THE FRAUDULENT SCHEME TO OVERSTATE WIRECARD’S REPORTED FINANCIAL RESULTS DURING THE CLASS PERIOD**

102. Throughout the Class Period, Wirecard and the Individual Defendants engaged in a variety of transactions that illicitly fabricated huge sums of nonexistent revenues and otherwise artificially inflated Wirecard’s reported financial results, including: a) the recognition of false revenues from TPA transactions; b) the recognition of false revenue from related party transactions and “round-tripping” transactions; and c) reporting huge (and fraudulent) cash balances.

### **A. Wirecard’s Recognition of False Revenues from Phony TPA Transactions With Foreign Wirecard Subsidiaries**

103. Half of Wirecard’s reported revenues and profits during the Class Period were generated through “partnerships” between Wirecard subsidiaries and three TPAs: 1) Al Alam Solutions (based in a largely unmanned office suite in Dubai); 2) PayEasy Solutions (based in the Philippines); and 3) Senjo (Singapore). According to Wirecard, in jurisdictions in which Wirecard is not licensed to act as an acquirer, it refers clients to these licensed TPAs, in exchange for a share of the processing fees generated by

1 those clients. In 2016, Wirecard's partnership with these TPAs purportedly generated  
2 revenues of €541 million and resulted in EBITDA of €290 million – representing more  
3 than half of Wirecard's reported annual revenues and approximately 95% of its  
4 EBITDA.  
5

6 104. These partnerships were between TPAs and foreign subsidiaries of  
7 Wirecard that were not audited by E&Y, but whose financial results flowed into  
8 Wirecard's consolidated reported financial results.  
9

10 105. In some instances, it appears that Wirecard reported the revenue of its  
11 third-party acquiring partners as Wirecard's own, and used escrow accounts funded by  
12 its subsidiaries to bolster the reported cash in Wirecard's account. In other instances, it  
13 appears that the revenues and profits that Wirecard recognized from these TPA  
14 partnerships were false, and appear to have been generated through bogus and  
15 nonexistent "transactions" between foreign subsidiaries of Wirecard with TPAs.  
16  
17

18 106. One disturbing example regarding Wirecard's largest "TPA partner" Al  
19 Alam Solutions was uncovered by *The Financial Times*.<sup>47</sup> Al Alam was purportedly a  
20 TPA partnering with Wirecard to process approximately €350 million in credit card  
21 transactions per month for 34 of Wirecard's largest customers. Wirecard claimed to  
22 refer clients to Al Alam in exchange for a share of the processing fees generated by  
23  
24  
25

---

26 <sup>47</sup> Dan McCrum, *Wirecard's Suspect Accounting Practices Revealed*, *The Financial*  
27 *Times* (Oct. 15, 2019), [https://www.ft.com/content/19c6be2a-ee67-11e9-bfa4-](https://www.ft.com/content/19c6be2a-ee67-11e9-bfa4-b25f11f42901)  
28 [b25f11f42901](https://www.ft.com/content/19c6be2a-ee67-11e9-bfa4-b25f11f42901).

1 those clients. *Wirecard's partnership with Al Alam generated approximately half of*  
2 *Wirecard's annual profits in 2016.* Curiously, the profits from Wirecard's Al Alam  
3 partnership were routed through subsidiaries in Dubai and Ireland that do not file  
4 public financial statements.

6 107. However, as uncovered by a FINANCIAL TIMES investigation, *the vast*  
7 *majority of these transactions appear to be fabricated.* FT reported that it visited Al  
8 Alam at its Dubai headquarters, only to find a “threadbare” company with just 6 or 7  
9 employees. FT uncovered a raft of evidence demonstrating that the claimed €350  
10 million per month in processing transactions (as well as the related revenues and  
11 profits Wirecard recognized in its financial reports) were fabricated. The evidence  
12 cited by FT included:

- 16 • When asked by *The Financial Times* in the course of its  
17 investigation, Visa and MasterCard both said they did not  
18 license Al Alam;
- 19 • When contacted by the FT, 15 of the 34 “clients” identified  
20 in Wirecard's internal financial records said that they “had  
21 never heard of Al Alam”;
- 22 • Although Wirecard's internal financial records claim that  
23 Al Alam was processing €46 million on a monthly basis  
24 during 2017 for a Wirecard client called Cymix Pyramid,  
25 Irish corporate records show that Cymix was liquidated in  
26 2012;
- 27 • Wirecard's financial records recorded approximately €24  
28 million of credit card transactions processed by Al Alam  
on behalf of U.S.-based CCBill, but that company's Chief  
Operating Officer told FT that his company had no  
connection to Al Alam “of any kind.”;

- Wirecard’s financial records reflect additional significant revenues and profits from its partnership in purported Al Alam processing transactions for companies that were no longer in business, including Bank de Binary, Molotok and Piku.

108. The phony revenues generated in the Al Alam partnership transactions were recognized by two thinly-staffed Wirecard subsidiaries, CardSystems Middle East (based in Dubai) and Wirecard UK & Ireland (based in Dublin).

109. Although the revenues and profits from the purported partnership with TPA Al Alam appear to be entirely (or nearly entirely) false, internal Wirecard financial records demonstrate that *Wirecard recognized €265 million in revenues leading to €173 million in EBITDA from these phony transactions – more than 25% of Wirecard’s reported revenues and more than half of its reported EBITDA for 2016.*

#### **B. Wirecard’s Fraudulent Recognition of “Round-Triping” Sales**

110. Singapore is the headquarters for Wirecard in Asia. During the Class Period, a senior Wirecard executive in Singapore used forged and backdated contracts in a string of transactions that illicitly fabricated the sales and profits of Wirecard subsidiaries in Asia and the Pacific.

111. This fraudulent activity was confirmed by a report from a whistleblower within the Company. Wirecard’s compliance department retained Rajah & Tann (“R&T”), a Singapore law firm, to conduct an inquiry. The lawyers found evidence of forged documents, accounting irregularities and potential money laundering in

1 multiple jurisdictions, ultimately leading to an internal presentation entitled “Project  
2 Tiger Summary” that outlined potential violations of Singapore law, including  
3 “falsification of accounts” and “money laundering” related to €37 million, which was  
4 relayed to the company’s four most senior executives, including Defendant Braun, on  
5 May 8, 2018.  
6

7  
8 112. For instance, the presentation describes contracts with a value of €13m,  
9 dated in 2017 and 2018, between four Wirecard subsidiaries and Flexi Flex, a  
10 hydraulics and piping company with offices in Singapore and Malaysia. However, all  
11 of these revenues were bogus and appear to be based on forged contracts, as confirmed  
12 by a director of Flexi Flex that told *The Financial Times* he had not heard of Wirecard,  
13 and that his company did not sell software, have Indonesian clients, or even use a  
14 payment company.  
15  
16

17 113. The “Project Tiger Summary” also described “round-trip transactions” in  
18 which money was routed from Wirecard businesses in Hong Kong and Singapore to  
19 those it owned in India via external companies and illicitly recognized as “sales”  
20 transactions. For example, EUR 2 million was recognized as revenues in a “round-  
21 trip” transaction on March 10, 2018 where Wirecard paid an outside company named  
22 Inventures, which then transferred the funds to Wirecard subsidiaries Hermes and GI  
23 Tech. Far from a legitimate sale to a third party, this transaction merely moved money  
24 from one Wirecard entity to another.  
25  
26  
27  
28



114. Recognition of these revenues violated Generally Accepted Accounting Principles, including IFRS 15.<sup>48</sup>

### C. Improper Recognition of Cash and Cash Equivalents

115. Due to the huge amounts of phony revenues described above, Wirecard reported corresponding and dramatically increasing cash balances in its annual financial statements during the Class Period:

Year	Cash (thousands of Euros)
2015	1,062,968
2016	1,332,631
2017	1,901,334
2018	2,719,800

116. By December 31, 2018, Wirecard's reported cash balances of more than €2.7 billion were *almost half* of the Company's reported total assets.

117. On June 22, 2020, Wirecard admitted that approximately €1.9 billion of the cash the Company had reported as an asset in its annual financial statements probably does "not exist."

<sup>48</sup> *Revenue from Contracts With Customers*, International Financial Reporting Standard No. 15, International Financial Reporting Standards Board.

## VII. MATERIALLY FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

### A. Wirecard's False and Misleading Reported 2015 Results

118. The Class Period commences on August 17, 2015, when the Company issued its second quarter 2015 financial report (Q2 2015 Report), which was entitled, “*Being Agile – Creating Value*,” which announced outstanding reported interim 2015 financial results as of June 30, 2015, including revenues of €340 million (an increase of 21% from the 2014 interim results); EBITDA of €98 million (an increase of 24%); and total assets of over €2 billion (an increase of 17%). However, these reported financial results were materially false and misleading for the reasons described in Section VI, *supra*.

119. The Q2 2015 Report also promised a continuation of its “successful strategy of organic growth combined with acquisitions,” and reported on the Company’s cash, cash equivalents, and net assets in pertinent part as follows:

Cash equivalents comprise current, extremely liquid financial investments that can be converted at any time at short notice into certain amounts of cash and are only subject to negligible fluctuations in value.

[...]

Assets reported in the balance sheet of Wirecard AG increased by kEUR 103,225 in the first half year 2015, rising from kEUR 1,995,159 to kEUR 2,125,384. In the period under review, both non-current and current assets grew, with the latter increasing from kEUR 1,183,013 to kEUR 1,283,102.

1           120. This disclosure was materially false and misleading because they were  
2 based upon false financial information and improper accounting methodology, as  
3 described in Section VI, *supra*.  
4

5           121. Wirecard's Q2 2015 Report was signed by Defendants Braun, Ley and  
6 Marsalek.  
7

8           122. The Q2 2015 Report also contained a statement attesting to the  
9 preparation of the report in accordance with IFRS and IAS:  
10

11                   The financial statements as of 30 June 2015 were prepared in  
12 accordance with IAS 34 (Interim Financial Reporting) with  
13 consideration to the International Financial Reporting  
Standards (IFRS) and the International Accounting Standards  
(IAS) as adopted by the EU.

14           123. This disclosure was materially false and misleading when made for the  
15 reasons described in Section VI, *supra*.  
16

17           124. On April 7, 2016, Wirecard issued a press release entitled "*Annual*  
18 *Results: Wirecard AG Reports a Successful 2015 Fiscal Year*," which announced  
19 outstanding reported financial results for the year ended December 31, 2015, including  
20 revenues of €771.3 million and operating earnings before interest, tax, depreciation  
21 and amortization (EBITDA) of €227.3 million. The April 7, 2016 Press Release also  
22 disclosed that these excellent reported financial results were the result of "strong  
23 organic growth" from both old and new customers:  
24  
25

26                   The Wirecard Group's strong organic growth in the 2015  
27 fiscal year was based on vigorous growth of the e-commerce  
28 core business. This is due to market growth and the resulting

1 rise in transaction volumes from our currently 22,000 existing  
2 customers, as well as the sales successes achieved with new  
3 customers and partners.

4 The April 7, 2016 Press Release also forecast significantly higher revenues and  
5 earnings in 2016 based upon continued “organic growth” in its target markets:

6 The Wirecard Group will continue to pursue primarily organic  
7 growth in its target markets. Acquisition opportunities will  
8 continue to be reviewed according to conservative M&A  
9 criteria. The strategy envisages providing customers of  
10 Wirecard AG with highest quality technology and service that  
11 is made readily available through the company's presence on  
12 all continents.

13 Wirecard AG’s Management Board expects operating  
14 earnings before interest, tax, depreciation and amortisation  
15 (EBITDA) of between EUR 290 million and EUR 310 million  
16 in 2016. This growth forecast is based on the market growth  
17 of online transactions in Europe, dynamic development of our  
18 global business, particularly in Asia, and our activities in the  
19 area of mobile services, as well as on our ability to open up  
20 new business areas

21 125. The April 7, 2016 Press Release also directed investors to the Company’s  
22 annual report (the “2015 Annual Report”), even providing a link to the web address  
23 containing this report ([www.ir.wirecard.com/financialreports](http://www.ir.wirecard.com/financialreports)).

24 126. The April 7, 2016 Press Release was materially false and misleading  
25 when disseminated because, *inter alia*: a) the financial information contained therein  
26 (including disclosure of Wirecard’s revenues, EBITDA and net income) were  
27 materially misstated as described in Section VI, *supra*; b) the Company’s reported  
28

1 financial results were not the result of “organic growth,” but rather the result of  
2 falsified financial reporting.

3  
4 127. Also on April 7, 2016, Wirecard held a conference call hosted by  
5 Defendants Braun and Ley to discuss the 2015 reported financial results with analysts  
6 and investors. This conference call was available to investors in the U.S. and  
7 throughout the world. In the conference call, Defendants Braun and Ley discussed and  
8 elaborated upon the same false and misleading financial results set forth in the April 7,  
9 2016 Press Release. Additionally, Defendant Braun disclosed the transaction volume  
10 from various geographical areas:  
11  
12

13 Outside Europe, we had a transaction volume of EUR11.2  
14 billion, from which EUR2.2 billion were in Singapore,  
15 EUR2.1 billion in Indonesia, EUR3.6 billion were the rest of  
16 Asia Pacific without Singapore and Indonesia. In the  
17 Americas, we did EUR1.6 billion, and in Middle East Africa  
18 EUR1.7 billion.

19 This disclosure was materially false and misleading because the transaction  
20 volumes were materially overstated, as described herein.

21 128. Wirecard’s 2015 Annual Report was made available on the Company’s  
22 website by April 7, 2016. The 2015 Annual Report contained the same materially false  
23 and misleading financial information as the April 7, 2016 Press release and was  
24 thereby false and misleading for the same reasons.

25  
26 129. The 2015 Annual Report also contained a sworn statement by Defendants  
27 Braun, Ley and Marsalek attesting to the accuracy of Wirecard’s financial reporting:  
28

**Responsibility statement and disclosures pursuant to Section 37Y No. 1 of the German Securities Trading Act (WpHG) in combination with Sections 297 (2) Clause 4 and 315 (1) Clause 6 of the German Commercial Code (HGB)**

To the best of our knowledge, and in accordance with the applicable reporting principles, the consolidated financial statements give a true and fair view of the assets, liabilities, financial position and results of operations of the Group, and the group management report includes a fair review of the development and performance of the business and the position of the Group, together with a description of the principal opportunities and risks associated with the expected development of the Group.

This disclosure was materially false and misleading when made because Wirecard's financial statements were materially false and misleading and did not give a true and fair view of the value of the revenues, earnings, assets, liabilities, shareholders' equity and financial position and results of operations of Wirecard.

130. Wirecard's 2015 Annual Report also stated the Company had systems in place to "guarantee" the correct accounting of business processes and transactions and to "ensure[] compliance" with accounting regulations and statutory standards. The 2015 Annual Report stated, in relevant part:

**2.4 Internal control and risk management system relating to the Group financial accounting process**

The Wirecard Group has an internal control and risk management system relating to the (Group) accounting process, in which suitable structures and processes are defined and then implemented within the organisation. This is designed to guarantee the timely, uniform and correct accounting of all business processes and transactions. It

ensures compliance with statutory standards, accounting regulations and the internal Group accounting directive, which is binding for all companies included in the consolidated financial statements. (emphasis added).

131. This statement was materially false and misleading because the Company's system of accounting and financial reporting internal controls were woefully deficient, as described in more detail in Section VI, *supra*.

132. The 2015 Annual Report also included E&Y's materially false and misleading disclosures that: 1) it had audited Wirecard's reported financial results pursuant to relevant professional auditing standards; and 2) based upon this audit, Wirecard's reported financial results were "a true and fair view of the net assets, financial position and results of operations of" Wirecard (emphasis added):

*We have audited* the consolidated financial statements prepared by Wirecard AG . . . . We conducted our audit of the consolidated financial statements in accordance with Sec. 317 HGB and *German generally accepted standards* for the audit of financial statements . . . . *We believe that our audit provides a reasonable basis for our opinion.*

Our audit has not led to any reservations.

In our opinion, based on the findings of our audit, the consolidated financial statements comply with IFRSs as adopted by the EU as well as the additional requirements of German commercial law pursuant to Sec. 315a (1) HGB and give a true and fair view of the net assets, financial position and results of operations of the Group in accordance with these requirements. The group management report is consistent with the consolidated financial statements and as a whole provides a suitable view of the Group's position and suitably presents the opportunities and risks of future development.

1 Munich, 6 April 2016

2 Ernst & Young GmbH

3 Wirtschaftsprüfungsgesellschaft

4 133. E&Y's disclosures described immediately above were materially false  
5 and misleading when made because, as described more fully in Section IX, *infra*: (1)  
6 E&Y knew, or was reckless in not knowing that Wirecard's financial statements were  
7 materially false and misleading and wildly overstated the Company's actual financial  
8 results; (2) E&Y had not conducted any audit of Wirecard's reported financial  
9 information consistent with generally accepted auditing standards; and (3) due to  
10 E&Y's massive audit flaws, any audit performed by E&Y was the equivalent of "no  
11 audit at all" and could not offer a reasonable basis to provide assurance of the  
12 accuracy of Wirecard's reported financial results.  
13  
14  
15

16 **B. Wirecard's False and Misleading Reported 2016 Results**

17 134. On April 6, 2017, the Company issued a press release Wirecard issued a  
18 press release entitled "*Wirecard AG: Successful 2016 Fiscal Year*," which announced  
19 outstanding reported financial results for the year ended December 31, 2016, including  
20 revenues of €1,028.4 million (an increase of 33% from 2015); EBITDA of €307.4  
21 million (an increase of 35.2%); and net income of €266.7 million (an increase of  
22 87%). However, these reported financial results were materially false and misleading  
23 for the reasons described in Section VI, *supra*.  
24  
25  
26  
27  
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1           135. The April 6, 2017 Press Release further disclosed that the transaction  
2 volume processed through the Wirecard platform grew by 36.5 percent to €61.7  
3 billion, including transaction volume of €August 17, 2015 outside Europe (31.8% of  
4 total transaction volume).  
5

6           136. The April 6, 2017 Press Release also predicted a “strong performance” of  
7 even better financial results in 2017:  
8

9                   The Management Board of Wirecard AG expects a strong  
10 performance in the 2017 fiscal year and confirms its forecast  
11 for earnings before interest, tax, depreciation and amortisation  
12 (EBITDA) of between EUR 382 million and EUR 400  
million.

13           137. This disclosure was materially false and misleading because they were  
14 based upon false financial information and improper accounting methodology, as  
15 described in Section VI, *supra*.  
16

17           138. The April 6, 2017 Press Release also disclosed that Wirecard’s “2016  
18 Annual Report is available on the company’s website at:  
19 [ir.wirecard.com/financialreports](http://ir.wirecard.com/financialreports).  
20

21           139. Wirecard’s 2016 Annual Report was signed by Defendants Braun, Ley  
22 and Marsalek. The 2016 Annual Report disclosed annual revenues of €1,028.4 million,  
23 EBITDA of €307.4 million, net income of €266.7 million, total assets of €3,482.1  
24 million and shareholder’s equity of €1,475.0 million. These reported financial results  
25 were all materially false and misleading for the reasons described in Section VI, *supra*.  
26  
27  
28

140. The 2016 Annual Report also contained a sworn statement by Defendants Braun, Ley and Marsalek attesting to the accuracy of Wirecard's financial reporting:

**Responsibility statement and disclosures pursuant to Section 37Y No. 1 of the German Securities Trading Act (WpHG) in combination with Sections 297 (2) Clause 4 and 315 (1) Clause 6 of the German Commercial Code (HGB)**

To the best of our knowledge, and in accordance with the applicable reporting principles, the consolidated financial statements give a true and fair view of the assets, liabilities, financial position and results of operations of the Group, and the group management report includes a fair review of the development and performance of the business and the position of the Group, together with a description of the principal opportunities and risks associated with the expected development of the Group.

141. This disclosure was materially false and misleading when made because Wirecard's financial statements were materially false and misleading and did not give a true and fair view of the value of the revenues, earnings, assets, liabilities, shareholders' equity and financial position and results of operations of Wirecard.

142. Wirecard's 2016 Annual Report stated the Company had systems in place to "guarantee" the correct accounting of business processes and transactions and to "ensure[] compliance" with accounting regulations and statutory standards. The 2016 Annual Report stated, in relevant part:

**2.4 Internal control and risk management system relating to the Group financial accounting process**

The Wirecard Group has an internal control and risk management system relating to the (Group) accounting

1 process, in which appropriate structures and processes are  
2 defined and then implemented within the organisation. ***This is***  
3 ***designed to guarantee the timely, uniform and correct***  
4 ***accounting of business processes and transactions.*** It  
5 ***ensures compliance*** with statutory standards, accounting  
6 regulations and the internal Group accounting directive,  
7 which is binding for all companies included in the  
8 consolidated financial statements. Any amendments to laws,  
9 accounting standards and other pronouncements are analysed  
10 for their relevance to, and impact on, the consolidated  
11 financial statements, and the internal directives and systems  
12 within the Group are adjusted to take account of the resulting  
13 changes.

10 The foundations of the internal control system, in addition to  
11 defined control mechanisms such as technical and manual  
12 reconciliation and coordination processes, lie in the separation  
13 of functions and ensuring compliance with directives and  
14 work instructions. The Group accounting process at Wirecard  
15 AG is managed by the Accounting and Controlling  
16 departments.

15 143. This statement was materially false and misleading because the  
16 Company's system of accounting and financial reporting internal controls were  
17 woefully deficient, as described in more detail in Section VI, *supra*.

19 144. The 2016 Annual Report also included E&Y's materially false and  
20 misleading disclosures that: 1) it had audited Wirecard's reported financial results  
21 pursuant to relevant professional auditing standards; 2) had reviewed Wirecard's  
22 systems of internal control; and 3) based upon this audit, Wirecard's reported financial  
23 results were "a true and fair view of the net assets, financial position and results of  
24 operations of" Wirecard (emphasis added):  
25  
26  
27  
28



In our opinion, based on the findings of our audit, *the consolidated financial statements comply with IFRSs as adopted by the EU as well as the additional requirements of German commercial law pursuant to Sec. 315a (1) HGB and give a true and fair view of the net assets, financial position and results of operations of the Group in accordance with these requirements.* The group management report is consistent with the consolidated financial statements, satisfy the legal requirements and as a whole provides a suitable view of the Group's position and suitably presents the opportunities and risks of future development.

Munich, 5 April 2017

Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft

145. These statements were false and misleading because as described more fully in Section IX, *infra*: 1) E&Y was reckless in not knowing that Wirecard's financial statements contained numerous false and misleading statements, 2) E&Y had not taken Wirecard's poor internal controls into account in designing audit procedures; and 3) E&Y failed to conduct an appropriate audit of Wirecard in accordance with applicable auditing principles.

### **C. Wirecard's False and Misleading Reported 2017 Results**

146. On April 12 2018, the Company issued a press release entitled "*Wirecard AG: Targets for 2017 fiscal year achieved*," which announced outstanding reported financial results for the year ended December 31, 2017, including the following:

Group revenues increased by 44.9 percent to EUR 1.5 billion (PY: EUR 1.0 billion). The transaction volume processed through the Wirecard platform grew by 47.5 percent to EUR 91.0 billion (PY: EUR 61.7 billion). A transaction volume of EUR 39.3 billion was generated outside Europe (PY: EUR August 17, 2015).

1 Operating earnings before interest, tax, depreciation and  
2 amortisation (EBITDA) increased in 2017 compared to the  
3 previous year by 34.2 percent to EUR 412.6 million (PY:  
4 EUR 307.4 million). In the 2017 fiscal year, the EBITDA  
5 margin increased to 27.7 percent (PY: 29.9 percent). The cash  
6 flow from operating activities (adjusted) amounted to EUR  
7 375.7 million (PY: EUR 283.0 million).

8 In the 2017 fiscal year, earnings after tax increased by 46.8  
9 percent to EUR 259.7 million, compared to the earnings in  
10 2016 adjusted for the special effect from the sale of Visa  
11 Europe of EUR 176.9 million. Thus earnings per share stood  
12 at EUR 2.10 (PY: EUR 1.43).

13 However, these reported financial results were materially false and misleading  
14 for the reasons described in Section VI, *supra*.

15 147. The April 12, 2018 Press Release also predicted even better financial  
16 results in 2017:

17 Due to the strong organic business development, Wirecard  
18 Management Board has increased the EBITDA guidance for  
19 the fiscal year 2018 to EUR 520 million to EUR 545 million  
20 (previous guidance: EUR 510 million to EUR 535 million).

21 148. This disclosure was materially false and misleading because they were  
22 based upon false financial information and improper accounting methodology, as  
23 described in Section VI, *supra*.

24 149. The April 12, 2018 Press Release also disclosed that Wirecard's "2017  
25 Annual Report is available on the company's website at:  
26 [ir.wirecard.com/financialreports](http://ir.wirecard.com/financialreports).  
27  
28

1           150. Wirecard's 2017 Annual Report was signed by Defendants Braun,  
2 Knoop, Steidl, Marsalek, and Matthias. The 2017 Annual Report disclosed annual  
3 revenues of €1,490.0 million, EBITDA of €412.6 million, net income of €259.7  
4 million, total assets of €4,527.5 million and shareholder's equity of €1,635.2 million.  
5 These reported financial results were all materially false and misleading for the  
6 reasons described in Section VI, *supra*.  
7  
8

9           151. The 2017 Annual Report also contained a sworn statement by Defendants  
10 Braun, Knoop, Steidl and Marsalek attesting to the accuracy of Wirecard's financial  
11 reporting:  
12

13           **Responsibility statement and disclosures pursuant to**  
14           **Section 37Y No. 1 of the German Securities Trading Act**  
15           **(WpHG) in combination with Sections 297 (2) Clause 4**  
16           **and 315 (1) Clause 6 of the German Commercial Code**  
              **(HGB)**

17           To the best of our knowledge, and in accordance with the  
18 applicable reporting principles, the consolidated financial  
19 statements give a true and fair view of the assets, liabilities,  
20 financial position and results of operations of the Group, and  
21 the group management report includes a fair review of the  
22 development and performance of the business and the position  
23 of the Group, together with a description of the principal  
24 opportunities and risks associated with the expected  
25 development of the Group.

26           152. This disclosure was materially false and misleading when made because  
27 Wirecard's financial statements were materially false and misleading (as described in  
28 Section VI, *supra*, and did not give a true and fair view of the value of the revenues,



1 earnings, assets, liabilities, shareholders' equity and financial position and results of  
 2 operations of Wirecard.

3  
 4 153. Wirecard's 2017 Annual Report stated the Company had systems in place  
 5 to "guarantee" the correct accounting of business processes and transactions and to  
 6 "ensure[] compliance" with accounting regulations and statutory standards. The 2017  
 7 Annual Report stated, in relevant part (emphasis added):  
 8

9 **2.4 Internal control and risk management system relating**  
 10 **to the Group financial accounting process**

11 The Wirecard Group has an internal control and risk  
 12 management system also in relation to the (Group) accounting  
 13 process, in which appropriate structures and processes are  
 14 designed to *guarantee the timely, uniform and correct*  
 15 *accounting* of business processes and transactions. It *ensures*  
 16 *compliance with statutory standards, accounting*  
 17 *regulations* and the internal Group accounting directive,  
 which is binding for all companies included in the  
 consolidated financial statements.

18 154. This statement was materially false and misleading because the  
 19 Company's system of accounting and financial reporting internal controls were  
 20 woefully deficient, as described in more detail in Section VI, *supra*.  
 21

22 155. The 2017 Annual Report also included E&Y's materially false and  
 23 misleading disclosures that: 1) it had audited Wirecard's reported financial results  
 24 pursuant to relevant professional auditing standards; 2) had reviewed Wirecard's  
 25 systems of internal control; and 3) based upon this audit, Wirecard's reported financial  
 26  
 27  
 28



1 results were “a true and fair view of the net assets, financial position and results of  
2 operations of” Wirecard (emphasis added):  
3

4 *We have audited* the consolidated financial statements of  
5 Wirecard AG, Aschheim, and its subsidiaries (the Group),  
6 which comprise the consolidated statement of financial  
7 position as of 31 December 2017, the consolidated statement  
8 of comprehensive income, consolidated statement of cash  
9 flows and consolidated statement of changes in equity for the  
fiscal year from 1 January 2017 to 31 December 2017, and  
notes to the consolidated financial statements, including a  
summary of significant accounting policies.

10 \* \* \*

11 In our opinion, on the basis of the knowledge obtained in the  
12 audit,

13 –the accompanying consolidated financial statements comply,  
14 in all material respects, with the IFRS as adopted by the EU,  
15 and the additional requirements of German commercial law  
16 pursuant to Section 315e (1) of the German Commercial Code  
17 (HGB) and, in compliance with these requirements, give a  
18 true and fair view of the assets, liabilities, and financial  
19 position of the Group as of 31 December 2017, and of its  
financial performance for the fiscal year from 1 January 2017  
to 31 December 2017.

#### 20 **Basis for the opinions**

21 *We conducted our audit* of the consolidated financial  
22 statements and of the group management report in accordance  
23 with Section 317 HGB and the EU Audit Regulation (No  
24 537/2014, referred to subsequently as “EU Audit  
25 Regulation”) and *in compliance with German Generally  
26 Accepted Standards for Financial Statement Audits*  
promulgated by the Institut der Wirtschaftsprüfer [Insti-tute  
of Public Auditors in Germany] (IDW).  
27  
28

156. These statements were false and misleading because as described more fully in Section IX, *infra*: (1) E&Y was reckless in not knowing that Wirecard's financial statements contained numerous false and misleading statements, (2) E&Y had not taken Wirecard's poor internal controls into account in designing audit procedures; and (3) E&Y failed to conduct an appropriate audit of Wirecard in accordance with applicable auditing principles, including IFRS or PCAOB Standards.

**D. Wirecard's False and Misleading Reported 2018 Results**

157. On April 25, 2019, Wirecard issued a press release entitled "*Wirecard AG: Next Stage of Growth*," which announced outstanding reported financial results for the year ended December 31, 2018, including the following:

Wirecard has entered the next stage of its growth path. In 2018, Group revenues increased by 35.4 percent to EUR 2.02 billion (PY: EUR 1.49 billion). The transaction volume processed through the Wirecard platform grew by 37.3 percent to EUR 124.9 billion (PY: EUR 91.0 billion).

Operating earnings before interest, tax, depreciation and amortisation (EBITDA) increased in 2018 compared to the previous year by 36.6 percent to EUR 560.5 million (PY: EUR 410.3 million). In the 2018 fiscal year, the EBITDA margin increased to 27.8 percent (PY: 27.6 percent). The cash flow from operating activities (adjusted) amounted to EUR 500.1 million (PY: EUR 375.7 million). The free cash flow from operating activities (adjusted) increased by 50.0 percent to EUR 423.9 million (PY: EUR 282.6 million).

Earnings after tax increased by 35.7 percent to EUR 347.4 million (PY: EUR 256.1 million), which corresponds to earnings per share of EUR 2.81 (PY: EUR 2.07).

1           However, these reported financial results were materially false and misleading  
2 for the reasons described in Section VI, *supra*.

3  
4           158. The April 25, 2019 Press Release also predicted even better financial  
5 results in 2019:

6                     Wirecard's Management Board has confirmed the EBITDA  
7 forecast for the 2019 fiscal year of between EUR 740 million  
8 and EUR 800 million.

9           159. This disclosure was materially false and misleading because they were  
10 based upon false financial information and improper accounting methodology, as  
11 described in Section VI, *supra*.

12  
13           160. The April 25, 2019 Press Release also disclosed that Wirecard's "2018  
14 Annual Report is available on the company's website at:  
15 [ir.wirecard.com/financialreports](http://ir.wirecard.com/financialreports).

16  
17           161. Wirecard's 2018 Annual Report was signed by Defendants Braun,  
18 Knoop, Steidl, Marsalek, and Matthias. The 2018 Annual Report disclosed annual  
19 revenues of €2,016.2 million, EBITDA of €560.5 million, net income of €347.4  
20 million, total assets of €5,854.9 million and shareholder's equity of €1,922.7 million.  
21 These reported financial results were all materially false and misleading for the  
22 reasons described in Section VI, *supra*.

23  
24  
25           162. The 2018 Annual Report also contained a sworn statement by Defendants  
26 Braun, Knoop, Steidl and Marsalek attesting to the accuracy of Wirecard's financial  
27 reporting:  
28

## Responsibility statement

To the best of our knowledge, and in accordance with the applicable reporting principles, the consolidated financial statements as of 31 December 2018 give a true and fair view of the assets, liabilities, financial position and results of operations of the Group, and the group management report, which has been combined with the management report for Wirecard AG, includes a fair view of the development and performance of the business and the position of the Group, together with the description of the principal opportunities and risks associated with the expected development of the Group.

163. The Annual Report 2018, in a section signed by Defendant Matthias, included the following regarding E&Y auditing the Company, in pertinent part:

Financial statements of the company and the consolidated financial statements

Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft audited the financial statements of the company as of 31 December 2018, the consolidated financial statements as of 31 December 2018 and the management report for the company and the Group, and issued unqualified audit opinions thereon. *The financial statements and the management report of the company were prepared in accordance with the German Commercial Code (HGB). The consolidated financial statements and the Group management report of the company were prepared in accordance with the International Financial Reporting Standards (IFRS) as well as the additional requirements of German law pursuant to Section 315e (1) of the HGB.*

In addition, Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Stuttgart, Munich branch, was commissioned to complete an audit with limited assurance of the Group non-financial declaration in accordance with ISAE 3000 and produced a corresponding report. The Group non-financial declaration has been published on the company's website at [ir.wire.com](http://ir.wire.com).

1 At the meeting on 24 April 2019, *the Supervisory Board*  
2 *intensively discussed and examined the consolidated financial*  
3 *statements and the Group management report, the Group*  
4 *non-financial declaration prepared in accordance with*  
5 *Section 315b of the HGB, the financial statements and*  
6 *management report for the company, the auditor's report and*  
7 *the Management Board's planned proposal for the*  
8 *appropriation of profit.* The required documents were  
9 submitted to the members of the Supervisory Board in good  
10 time before the meeting so that they had sufficient opportunity  
11 to examine them. The auditor participated at this meeting of  
12 the Supervisory Board, reported on key audit results and was  
13 available to the members of the Supervisory Board to provide  
14 supplementary information. The auditor addressed in  
15 particular key audit matters which included allegations by a  
16 whistle-blower in Singapore. The auditor also explained his  
17 findings on the company's control and risk management  
18 system relating to the financial accounting process. The  
19 Supervisory Board will participate in the further strengthening  
20 of these systems in the course of the continuing growth of the  
21 company (cf. 2.5 of the Risk Report). *The auditor stated his*  
22 *independence and provided information about services that*  
23 *had been rendered in addition to the auditing services in the*  
24 *2018 fiscal year.*

18 The Supervisory Board approved the results of the audit  
19 carried out by the auditor and concluded that no objections  
20 needed to be raised based on the final results of its  
21 examination. The Supervisory Board in particular concurs  
22 with the conclusion of the auditor that - taking into account  
23 the corrections made by Wirecard – there are no objections  
24 against the accounting treatment of the facts that were the  
25 subject of various allegations made by a purported whistle-  
26 blower in Singapore (cf. the statements under 2.5 of the Risk  
27 Report regarding current investigations of the authorities in  
28 Singapore and possible criminal liability of individual  
employees.) In this context, the Supervisory Board took into  
consideration in particular the quality of the alleged behavior  
and the materiality threshold for the group audit. With a  
resolution dated 24 April 2019, the Supervisory Board  
approved both the consolidated financial statements of the

1 company prepared according to IFRS for the 2018 fiscal year  
2 and the financial statements of the company prepared  
3 according to the HGB for the 2018 fiscal year. The financial  
4 statements have consequently been adopted in the sense of  
5 Section 172 of the AktG.

6 At the meeting on 24 April 2019, the Supervisory Board  
7 approved this Report of the Supervisory Board, as well as the  
8 Corporate Governance Report that is combined with the  
9 Corporate Governance Statement.

10 [...]

11 At the Annual General Meeting 2018, Ernst & Young GmbH  
12 Wirtschaftsprüfungsgesellschaft, Stuttgart, Munich branch,  
13 was appointed as the auditor for the financial statements of the  
14 company and the consolidated financial statements. The  
15 responsible auditor for the 2018 fiscal year in Mr. Martin  
16 Dahmen. Ernst & Young GmbH  
17 Wirtschaftsprüfungsgesellschaft has been the sole auditor of  
18 the company and the Group since 2011 and was previously  
19 joint auditor together with RP Richter GmbH  
20 Wirtschaftsprüfungsgesellschaft since 2009. In December  
21 2018 the company published the invitation to tender for the  
22 group audit 2019. After the completion of the tender  
23 procedure the new auditor will be elected by the Annual  
24 General Meeting 2019.

25 *It was agreed with the auditor of the financial statements that*  
26 *he/she would report to the Supervisory Board without delay*  
27 *all findings and events material to the duties of the*  
28 *Supervisory Board as determined in the course of its audit.*

*In addition, the auditors are required to inform the*  
*Supervisory Board and/or to make a note in the audit report*  
*if they encounter facts in the course of the audit that are*  
*irreconcilable with the statement of compliance issued by the*  
*management Board and Supervisory Board in accordance*  
*with Section 161 AktG.*

(Emphasis added.)



1           164. The foregoing statements were materially false and misleading when  
 2 made because Wirecard's financial statements were materially false and misleading  
 3 (as described in Section VI, *supra*, and did not give a true and fair view of the value of  
 4 the revenues, earnings, assets, liabilities, shareholders' equity and financial position  
 5 and results of operations of Wirecard.  
 6

7  
 8           165. Wirecard's 2018 Annual Report stated the Company had systems in place  
 9 designed to "guarantee" the correct accounting of business processes and transactions  
 10 and to "ensure[]" compliance" with accounting regulations and statutory standards. The  
 11 2018 Annual Report stated, in relevant part (emphasis added):  
 12

#### 13                   **2.4 Internal control and risk management system**

14           Wirecard has an internal control and risk management system  
 15 also in relation to the (Group) accounting process, in which  
 16 appropriate structures and processes are defined and then  
 17 implemented within the organisation. This is *designed to*  
 18 *guarantee the timely, uniform and correct accounting of*  
 19 *business processes and transactions*. It *ensures compliance*  
 20 *with statutory standards, accounting regulations and the*  
 21 *internal Group accounting directive*, which is binding for all  
 22 companies included in the consolidated financial statements.  
 23 Any amendments to laws, ac-counting standards and other  
 24 pronouncements are ana-lysed for their relevance to, and  
 25 impact on, the consolidated financial statements, and the  
 26 internal directives and systems within the Group are adjusted  
 27 to take account of the resulting changes.  
 28

166. This statement was materially false and misleading because the  
 Company's system of accounting and financial reporting internal controls were  
 woefully deficient, as described in more detail in Section VI, *supra*.

167. The 2018 Annual Report also included E&Y’s materially false and misleading disclosures that: 1) it had audited Wirecard’s reported financial results pursuant to relevant professional auditing standards; 2) had reviewed Wirecard’s systems of internal control; and 3) based upon this audit, Wirecard’s reported financial results were “a true and fair view of the net assets, financial position and results of operations of” Wirecard (emphasis added):

*We have audited* the consolidated financial statements of Wirecard AG, Aschheim, and its subsidiaries (the Group), which comprise the consolidated statement of financial position as of 31 December 2018, the consolidated income statement, the consolidated statement of comprehensive income, consolidated statement of changes in equity and consolidated statement of cash flows for the fiscal year from 1 January 2018 to 31 December 2018, and notes to the consolidated financial statements, including a summary of significant accounting policies.

\* \* \*

In our opinion, on the basis of the knowledge obtained in the audit, *the accompanying consolidated financial statements comply, in all material respects, with the IFRS* as adopted by the EU, and the additional requirements of German commercial law pursuant to Sec. 315e (1) of the HGB [“Handelsgesetzbuch”: German CommercialCode] and, in compliance with these requirements, give a true and fair view of the assets, liabilities, and financial position of the Group as at 31 December 2018, and of its financial performance for the reporting year from 1 January 2018 to 31 December 2018.

#### **Basis for the opinions**

*We conducted our audit* of the consolidated financial statements and of the group management report in accordance with Sec. 317 HGB and the EU Audit Regulation (No 537/2014, referred to subsequently as “EU Audit



Regulation”) and *in compliance with German Generally Accepted Standards for Financial Statement Audits* promulgated by the Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (IDW).

168. These statements were false and misleading because as described more fully in Section IX, *infra*: (i) E&Y was reckless in not knowing that Wirecard’s financial statements contained numerous false and misleading statements, (ii) E&Y had not taken Wirecard’s poor internal controls into account in designing audit procedures; and (iii) E&Y failed to conduct an appropriate audit of Wirecard in accordance with applicable auditing principles.

#### **VIII. THE TRUTH REGARDING WIRECARD’S MASSIVE FRAUD EMERGES THROUGH A SERIES OF PARTIAL DISCLOSURES**

169. On January 30, 2019, *The Financial Times* reported that a Wirecard executive had used forged and backdated contracts in a string of suspicious transactions that, it said, raised questions about the integrity of the company’s accounting practices. According to the article, an internal presentation “outlined potential violations of Singapore law, including ‘falsification of accounts’ and ‘money laundering.’” Further, “[t]he whistleblower who briefed the FT on the document was motivated to do so, the person said, out of a concern that no action appeared to have been taken over potentially criminal acts inside a company presenting itself as a blue-chip financial institution.”

170. On this disturbing news, shares of WCAGY fell \$8.54 per share from the prior day’s closing price of \$95.20 (or nearly 9%) to close at \$86.66 per share on

1 January 30, 2019. Shares of WRCDF fell \$28.10 per share from the prior day's closing  
2 price of \$190.00 per share (nearly 15%) to close at \$161.90 per share on January 30,  
3 2019.  
4

5 171. In order to prop up its share price, Wirecard immediately issued a  
6 statement on January 30, 2019 calling *The Financial Times* article “false, inaccurate,  
7 misleading and defamatory” and further claiming that the article “lacks any substance  
8 and is completely meaningless.”  
9

10 172. On February 1, 2019, *The Financial Times* reported that “[a]n external  
11 law firm commissioned by Wirecard to investigate the payment company’s Singapore  
12 office found evidence indicating ‘serious offences of forgery and/or of falsification of  
13 accounts’, according to a preliminary report on the inquiry seen by the Financial  
14 Times.” According to the article, the lawyers’ report stated the following:  
15  
16

17 On the face of the evidence uncovered so far, these acts appear  
18 to bear out at the very least serious offences of forgery and/or  
19 of falsification of accounts/documents under section 477A of  
20 Singapore’s Penal Code. As these acts were intentional, there  
21 are reasons to suspect that they may have been carried out to  
22 conceal other misdeeds, such as cheating, criminal breach of  
23 trust, corruption and/or money laundering.

24 173. On this news, shares of WCAGY fell \$16.60 per share from the prior  
25 day’s closing price of \$83.24 (nearly 20%) to close at \$66.64 per share on February 1,  
26 2019. Shares of WRCDF fell \$30.17 per share from the prior day’s closing price of  
27 \$164.05 (18.4%) to close at \$133.88 per share on February 1, 2019.  
28

1           174. On April 24, 2019, *The Financial Times* published another article  
2 entitled, “Wirecard relied on Three Opaque Partners for Almost All its Profit,”  
3 reporting that “[h]alf of the worldwide revenue and almost all of the reported profits of  
4 Wirecard” have come from only three opaque partner companies in recent years.  
5 According to the article, Al Alam Solutions, a Dubai-based payments processor with  
6 skeletal operations, was the largest of the three “partner” entities, and a former Al  
7 Alam employee said the business had six or seven staff in total and “the boss” was  
8 Oliver Bellenhaus, a Wirecard executive. The other partners were PayEasy Solutions,  
9 a Philippine payments group that shares an office with a Manila bus company, and  
10 Singapore-based Senjo. The three companies allegedly contributed earnings before  
11 interest, tax, depreciation and amortisation of €290m on revenues of €541m.<sup>49</sup>  
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16           175. The next day, on April 25, 2019, *The Financial Times* published an  
17 article entitled, “Wirecard seeks to put scandal behind it with results,” reporting that  
18 Wirecard had announced that auditor E&Y signed off its 2018 accounts and that the  
19 supervisory board had agreed measures to improve its processes. According to the  
20 article, publication of full-year results had been delayed for three weeks after Wirecard  
21 disclosed that some employees may face criminal liability in the group’s Singapore  
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26           <sup>49</sup> Dan McCrum, *Wirecard relied on three opaque partners for almost all its profit*,  
27 *The Financial Times* (Apr. 24, 2019), <https://www.ft.com/content/a7b43142-6675-11e9-9adc-98bf1d35a056>.  
28

1 unit, where it is embroiled in a police investigation into suspected forgery and  
2 fraudulent accounting.<sup>50</sup>

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4 176. On this news, shares of WCAGY fell \$4.72 per share from the prior day's  
5 closing price of \$75.90 (6.2%) to close trading at \$71.18 per share on April 25, 2019.  
6 Shares of WRCDF fell \$6.00 per share from the previous-day's closing price of  
7 \$146.25 (4.1%) to close trading at \$140.25 per share on April 25, 2019.  
8

9 177. On October 14, 2019, *The Financial Times* published an article entitled,  
10 "Wirecard's suspect accounting practices revealed," which cast further doubt on  
11 Wirecard's accounting practices.  
12

13 178. In response, shares of WCAGY fell \$1.09 per share from the prior day's  
14 closing price of \$78.29 (1.39%) to close trading at \$77.20 per share on October 14,  
15 2019. Shares of WRCDF fell \$5.92 per share from the previous-day's closing price of  
16 \$157.71 (5.92%) to close trading at \$151.79 per share on October 14, 2019. The next  
17 day, shares continued to plummet, as shares of WCAGY fell another \$9.83 per share  
18 (12.73%) to close trading at \$67.37 per share on October 15, 2019. Shares of WRCDF  
19 fell \$17.25 per share (11.36%) to close trading at \$134.54 per share on October 15,  
20 2019.  
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26 <sup>50</sup> Olaf Storbeck and Dan McCrum, *Wirecard seeks to put scandal behind it with*  
27 *results*, *The Financial Times* (Apr. 25, 2019), [https://www.ft.com/content/9f6b4f70-](https://www.ft.com/content/9f6b4f70-671f-11e9-9adc-98bf1d35a056)  
28 [671f-11e9-9adc-98bf1d35a056](https://www.ft.com/content/9f6b4f70-671f-11e9-9adc-98bf1d35a056).

1           179. On November 6, 2019, *The Financial Times* published an article entitled,  
2 “KPMG widens review of Wirecard accounting,” which reported on Wirecard’s  
3 announcement that “a special audit by KPMG will be wider-ranging than previously  
4 announced, examining accusations from short-sellers about the German payment  
5 company’s lending activities in Brazil and Turkey.”<sup>51</sup>  
6

7  
8           180. According to the article, in addition to reported suspicions that hundreds  
9 of millions of euros in sales and profits at Wirecard businesses in Dubai and Dublin  
10 were fraudulent, KPMG would also look at Wirecard’s use of a type of lending known  
11 as a “Merchant Cash Advance” — a type of loan designed to bridge the gap between  
12 when merchants process credit card payments and when they receive the money.  
13 Specifically, KPMG would look into the claims made by short seller MCA  
14 Mathematik that, while Wirecard claimed it had put €400m into making short-term  
15 loans to its customers, with many of them being located in Turkey and Brazil, filings  
16 made by Wirecard’s Brazil subsidiary at the Brazil’s central bank do not describe  
17 significant MCA lending. In Turkey, such advance cash loans to merchants were not  
18 legal, so it remains unclear where money for the loans had gone. Wirecard claimed  
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26           <sup>51</sup> Olaf Storbeck and Dan McCrum. *KPMG widens review of Wirecard accounting*,  
27 *The Financial Times* (Nov. 6, 2019), <https://www.ft.com/content/e132cb98-0073-11ea-b7bc-f3fa4e77dd47>.  
28

1 that KPMG had already started work on the special audit, which is expected to be  
2 concluded by March 2020.<sup>52</sup>

3  
4 181. On January 10, 2020, the Company announced that Wulf Matthias,  
5 Chairman of the Supervisory Board of Wirecard AG, “has resigned in today’s Board  
6 Meeting as Chairman of the Supervisory board for personal reasons.”<sup>53</sup> The same day,  
7 *Bloomberg* published an article entitled, “Wirecard Chairman Resigns in Midst of  
8 Accounting Controversy,” reporting that Matthias “resigned after months of  
9 controversy over the digital payments company’s accounting practices,” and had  
10 “faced a battle to calm investors rattled by reports of accounting irregularities.  
11 According to Neil Campling, an analyst at Mirabaud Securities, “[t]he role of the  
12 supervisory board, which Matthias chaired, “is key,” especially in Wirecard’s case.  
13 KPMG, which has been commissioned to perform an independent special audit on the  
14 back of the allegations, is accountable only to the supervisory board, he said.  
15 Supervisory boards in Germany play an important role as they are formed of  
16 shareholders and employee representatives, who oversee the management and approve  
17 major business decisions.<sup>54</sup>

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<sup>52</sup> *Id.*

24 <sup>53</sup> Press Release, Wirecard, Change at the top of the Supervisory Board of Wirecard  
25 AG: Wulf Matthias resigns from the chair of the committee (Jan. 10, 2020),  
26 [https://www.wirecard.com/en-us/company/press-releases/change-at-the-top-of-the-](https://www.wirecard.com/en-us/company/press-releases/change-at-the-top-of-the-supervisory-board-of-wirecard-ag)  
27 [supervisory-board-of-wirecard-ag](https://www.wirecard.com/en-us/company/press-releases/change-at-the-top-of-the-supervisory-board-of-wirecard-ag).

28 <sup>54</sup> Nico Grant *et al.*, *Wirecard Chairman Resigns in Midst of Accounting Controversy*, Bloomberg Technology (Jan. 10, 2020, 2:46 PM),

182. *Bloomberg* also noted Wirecard’s revenue soared in 2018 after it bought more than 15 companies in a few years, allegations of accounting fraud at Wirecard in Singapore and other Asian countries, the R&T investigation, and *The Financial Times*’ report in October 2019 that “payments processed by a Dubai-based partner company in 2016 and 2017 may not have taken place.” Neil Campling also stated, “The more we dig on Wirecard, the more disturbing it looks,” according to the article.

183. On April 28, 2020, KPMG reported that its investigation into Wirecard’s practices had been obstructed by both Wirecard and its third party partners, and it was unable to trace or verify any of the underlying transactions for 2016 to 2018, the period it was investigating. According to KPMG, the Company’s third-party partners refused to cooperate, rendering KPMG unable to confirm whether the Company’s reported sales revenue existed or was correct.<sup>55</sup> Moreover, KPMG also reported that “Bank statements that prove the receipt of payments of about €1bn at escrow agent 1, were not submitted to us,” and that its investigators “have not been able to conclusively assess the reliability of the bank confirmations” sent to Wirecard’s

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<https://www.bloomberg.com/news/articles/2020-01-10/wirecard-chairman-resigns-in-midst-of-accounting-controversy>.

<sup>55</sup> Paul J. Davies, *Wirecard Shares Tumble as Questions Remain After Special Audit*, *The Wall Street Journal* (Apr. 28, 2020), <https://www.wsj.com/articles/wirecard-tumbles-as-questions-remain-after-special-audit-11588071316>.



1 longstanding auditor, E&Y. In some cases, KPMG had to rely on screenshots instead  
2 of original documents.<sup>56</sup>

3  
4 184. In the hours following the release of the KPMG report, analysts and  
5 journalists quickly noted the report's alarming adverse findings. Most critically,  
6 KPMG was unable to verify over \$1 billion in transactions with third parties due to  
7 Wirecard's apparent refusal or inability to provide relevant data.<sup>57</sup> KPMG's  
8 examination of the third party business is still ongoing, and the publication of  
9 Wirecard's annual results was postponed once again.<sup>58</sup> KPMG encountered delays and  
10 obstacles to the investigation, including "an absence of original documents such as  
11 bank records, a 'significant delay' in accessing material and difficulty in securing  
12 interviews with key Wirecard employees."<sup>59</sup> One analyst described the report as  
13 "anything but a clean bill of health," and added that the years 2016 to 2018 "remain a  
14 black hole" that left Wirecard "wide open to further allegations."<sup>60</sup> The same day, on  
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20 <sup>56</sup> Olaf Storbeck and Dan McCrum, *KPMG unable to verify Wirecard's third-party*  
21 *profits*, The Financial Times (Apr. 28, 2020), [https://www.ft.com/content/56a2057c-](https://www.ft.com/content/56a2057c-b975-4965-b0cf-641b83ee0f82)  
[b975-4965-b0cf-641b83ee0f82](https://www.ft.com/content/56a2057c-b975-4965-b0cf-641b83ee0f82).

22 <sup>57</sup> Sarah Syed and Eyk Henning, *Wirecard Says KPMG Could Not Review All Data*  
23 *for Audit*, Bloomberg (Apr. 28, 2020), [https://finance.yahoo.com/news/wirecard-says-](https://finance.yahoo.com/news/wirecard-says-kpmg-could-not-061125248.html)  
[kpmg-could-not-061125248.html](https://finance.yahoo.com/news/wirecard-says-kpmg-could-not-061125248.html) [ECF No. 74-9].

24 <sup>58</sup> Olaf Storbeck and Dan McCrum, *KPMG unable to verify Wirecard's third-party*  
25 *profits*, Financial Times (Apr. 28, 2020), [https://www.ft.com/content/56a2057c-b975-](https://www.ft.com/content/56a2057c-b975-4965-b0cf-641b83ee0f82)  
[4965-b0cf-641b83ee0f82](https://www.ft.com/content/56a2057c-b975-4965-b0cf-641b83ee0f82) [ECF No. 74-10].

26 <sup>59</sup> *Id.*

27 <sup>60</sup> Patricia Uhlig, Hans Seidenstuecker and Aradhana Aravindan, *Wirecard Shares*  
28 *Crash 26% After Critical KPMG Audit*, The New York Times (Apr. 28, 2020),



1 April 28, 2020, a prominent investor published an open letter to Wirecard's  
 2 supervisory board stating that KPMG's inability to verify Wirecard's financial  
 3 statements raised additional questions over management's compliance with anti-money  
 4 laundering and know-your-customer laws, and called for the removal of CEO Markus  
 5 Braun.<sup>61</sup>

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 8 185. As a result of the foregoing, shares of WCAGY fell \$17.13 from the prior  
 9 day's closing price of \$71.71 (17.13%) to close trading at \$54.58 per share on April  
 10 28, 2020 and another \$4.91 per share (9.00%) to close trading at \$49.67 per share on  
 11 April 29, 2020. Shares of WRCDF fell \$35.75 from the prior day's closing price of  
 12 \$140.79 (25.39%) to close trading at \$105.04 per share on April 28, 2020 and another  
 13 \$5.04 per share (4.80%) to close trading at \$100.00 per share on April 29, 2020.

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 16 186. On May 4, 2020, Braun publicly rejected calls for him to step aside. In an  
 17 apparent concession that the Company's internal controls were grossly deficient, the  
 18 Braun announced nine projects to improve "global internal control systems including  
 19 how it reports and punishes compliance violations and dealings with business  
 20 partners." Among the changes announced were a boosting of staff in the Company's  
 21  
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 23

24 [https://www.nytimes.com/reuters/2020/04/28/technology/28reuters-wirecard-auditor-](https://www.nytimes.com/reuters/2020/04/28/technology/28reuters-wirecard-auditor-report.html)  
 25 [report.html](https://www.nytimes.com/reuters/2020/04/28/technology/28reuters-wirecard-auditor-report.html) [ECF No. 74-11].

26 <sup>61</sup> Chris Hohn and Max Schroeder, Letter: *Audit of Wirecard by KPMG*, TCI Fund  
 27 Management Limited (Apr. 28, 2020),  
 28 [https://www.tcifund.com/files/corporateengagement/wirecard/TCI%20-](https://www.tcifund.com/files/corporateengagement/wirecard/TCI%20-%20Letter%20to%20Wirecard%2028%20April%202020.pdf)  
[%20Letter%20to%20Wirecard%2028%20April%202020.pdf](https://www.tcifund.com/files/corporateengagement/wirecard/TCI%20-%20Letter%20to%20Wirecard%2028%20April%202020.pdf) [ECF No. 74-12].

1 compliance department to 160 from 100, and a move away from doing business with  
 2 third-party business partners, which process payments in countries where Wirecard  
 3 has no license to operate.<sup>62</sup> On the same day, an analyst called the audit report “mostly  
 4 a disaster” as it “failed to conclusively rule out any balance sheet manipulation at  
 5 Wirecard and instead contained some crushing language regarding transparency and  
 6 cooperation.”<sup>63</sup>

9 187. On this news, shares of WCAGY fell \$1.16 per share from the prior day’s  
 10 closing price of \$48.95 (2.36%) to close trading at \$47.79 per share on May 4, 2020.  
 11 Shares of WRCDF fell \$2.64 per share from the previous-day’s closing price of  
 12 \$101.25 (2.61%) to close trading at \$98.61 per share on May 4, 2020.

14 188. On May 11, 2020, *Reuters* reported that a Munich court is planning to  
 15 drop proceedings against British short seller Fraser Perring for suspected manipulation  
 16 of Wirecard’s share price. The investigation into Perring was launched in 2016 after  
 17 Wirecard’s stock plummeted after Perring’s Zatarra Research accused the company of  
 18 misleading accounting and fraud.<sup>64</sup> The case essentially ended Wirecard’s long-

22 <sup>62</sup> Eyk Henning, Sarah Syed, and Jan-Patrick Barnert, *Wirecard CEO Resists Calls*  
 23 *to Quit, Plans Business Overhaul*, Bloomberg (May 4, 2020),  
 24 <https://www.bloomberg.com/news/articles/2020-05-04/wirecard-ceo-resists-calls-to-quit-plans-to-overhaul-business>.

25 <sup>63</sup> Stefan Redlich, *Wirecard Bombs Again Following A Devastating KPMG Special*  
 26 *Audit Report*, Seeking Alpha (May 4, 2020),  
 27 <https://seekingalpha.com/article/4342613-wirecard-bombs-again-following-devastating-kpmg-special-audit-report>.

28 <sup>64</sup> Joern Poltz, Doug Busvine, and Tom Sims, *Munich court to drop case against*

1 standing defense that critiques of its accounting practices were mere schemes by short  
2 sellers.

3  
4 189. On this news, shares of WCAGY fell \$1.41 per share from the prior day's  
5 closing price of \$50.91 (2.77%) to close trading at \$49.50 per share on May 11, 2020.  
6 Shares of WRCDF fell \$7.98 per share from the previous-day's closing price of  
7 \$104.00 (7.67%) to close trading at \$96.02 per share on May 11, 2020.  
8

9 190. On June 18, 2020, Wirecard announced that its auditor, Ernst & Young  
10 GmbH, informed the Company that EUR 1.9 billion (\$2.1 billion) (approximately a  
11 quarter of the Company's consolidated balance sheet total could not be accounted for,  
12 and that as result, the audit of its 2019 annual and consolidated financial statements  
13 would be postponed indefinitely.<sup>65</sup>  
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16 191. On this news, shares of WCAGY fell \$38.30 per share from the prior  
17 day's closing price of \$58.50 (65.47%) to close trading at \$20.20 per share on June 18,  
18 2020. Shares of WRCDF fell \$71.47 per share from the previous-day's closing price  
19 of \$113.29 (71.47%) to close trading at \$41.82 per share on June 18, 2020.  
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21

22  
23 *British short seller over Wirecard shares*, Reuters (May 11, 2020),  
24 <https://www.reuters.com/article/us-wirecard-shortsale/munich-court-to-drop-case-against-british-short-seller-over-wirecard-shares-idUSKBN22N1Y4>.

25 <sup>65</sup> Press Release, Wirecard, Wirecard AG: Date for publication of annual and  
26 consolidated financial statements 2019 delayed due to indications of presentation of  
27 spurious balance confirmations (June 18, 2020),  
28 <https://ir.wirecard.com/websites/wirecard/English/5110/news-detail.html?newsID=1984117&fromID=1000>.

1           192. The next day, on June 19, 2020, the Company issued a brief statement  
 2 that Braun had resigned as CEO “with immediate effect” and that James Freis would  
 3 take his place as interim CEO.<sup>66</sup> *CNN Business* similarly reported on the resignation,  
 4 further reporting that if the missing \$2 billion is “not found quickly, the digital  
 5 payments firm may never recover.”<sup>67</sup> Jasper Lawler, head of research at London  
 6 Capital Group, reportedly stated that “Without a very concise explanation in short  
 7 order, we fear Wirecard is headed to zero.”<sup>68</sup>

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 10           193. On this news, shares of WCAGY fell \$6.45 per share from the prior day’s  
 11 closing price of \$20.20 (31.93%) to close trading at \$13.75 per share on June 19,  
 12 2020. Shares of WRCDF fell \$14.22 per share from the previous-day’s closing price  
 13 of \$41.82 (34.00%) to close trading at \$27.60 per share on June 19, 2020.  
 14

15  
 16           194. On June 22, 2020, Wirecard admitted that the \$2 billion of cash on its  
 17 balance sheet probably does “not exist,” that it had previously mischaracterized its  
 18 biggest source of profits, and that it was now trying to work out “whether, in which  
 19 manner and to what extent such business has actually been conducted for the benefit  
 20 of the company”. The Company additionally withdrew its most recent financial results  
 21  
 22

23           <sup>66</sup> Charles Riley and Eoin McSweeney, *Wirecard CEO quits after \$2 billion goes*  
 24 *missing and fraud accusations fly*, *CNN Business* (June 19, 2020),  
 25 <https://www.cnn.com/2020/06/19/tech/wirecard-fraud-tech-accounting/index.html>.

26           <sup>67</sup> Ryan Browne, *Wirecard CEO Markus Braun resigns as accounting scandal*  
 27 *batters shares*, *CNBC* (June 19, 2020), <https://www.cnbc.com/2020/06/19/wirecard-ceo-markus-braun-resigns-as-company-share-price-collapses.html>.

28           <sup>68</sup> *Id.*

1 and said other years' accounts may be inaccurate.<sup>69</sup> As *The Wall Street Journal*  
 2 reported the same day, the announcement left the Company, fighting for survival, as  
 3 the Company began working to retain credit lines with lenders and cut costs or sell  
 4 business lines to stay afloat, and its fall from grace would represent "one of the biggest  
 5 corporate scandals in Europe" in years. Felix Hufeld, the president of BaFin,  
 6 Germany's financial regulator, described Wirecard's situation as "a complete  
 7 disaster."<sup>70</sup>

10 195. Of particular note was the revelation that the missing (and likely  
 11 fictitious) \$2 billion was equivalent to all the net income Wirecard had reported over  
 12 more than a decade, and that the three main third-party partner companies that  
 13 supposedly provided a large share of Wirecard's reported revenue and the bulk of its  
 14 profits for years may never have provided any business to the Company.<sup>71</sup>

17 196. The same evening, then-former CEO Braun was arrested in Munich,  
 18 following prosecutors' suspicion that Braun was inflating Wirecard's balance sheet

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21 <sup>69</sup> Olaf Storbeck, Dan McCrum, and Stefania Palma, *Wirecard fights for survival as*  
 22 *it admits scale of fraud*, Financial Times (June 22, 2020),  
<https://www.ft.com/content/2581fda5-8c89-46b5-9acf-ba8a88d74d88>.

23 <sup>70</sup> Paul J. Davies, *Wirecard Says Missing \$2 Billion Probably Doesn't Exist*, The  
 24 Wall Street Journal (June 22, 2020), [https://www.wsj.com/articles/wirecards-missing-](https://www.wsj.com/articles/wirecards-missing-2-billion-probably-doesnt-exist-board-says-11592802732)  
 25 [2-billion-probably-doesnt-exist-board-says-11592802732](https://www.wsj.com/articles/wirecards-missing-2-billion-probably-doesnt-exist-board-says-11592802732); *see also* Charles Riley,  
 26 *Wirecard says missing \$2 billion never existed. Its stock is down 85% in 3 days*, CNN  
 27 Business (June 22, 2020), [https://www.cnn.com/2020/06/22/tech/wirecard-missing-](https://www.cnn.com/2020/06/22/tech/wirecard-missing-money/index.html)  
[money/index.html](https://www.cnn.com/2020/06/22/tech/wirecard-missing-money/index.html).

28 <sup>71</sup> *Id.*

1 and sales volume by faking income from transactions with so-called third-party  
 2 acquirers, possibly in cooperation with other perpetrators, for the purpose of making  
 3 the company appear financially strong and more attractive for investors and  
 4 customers. Braun was granted bail of 5 million euros (\$5.67 million) the following  
 5 afternoon.<sup>72</sup> Wirecard also announced, without explanation, that it had terminated Jan  
 6 Marsalek, its chief operating officer that it had previously suspended.<sup>73</sup>

9 197. On this news, shares of WCAGY fell \$6.35 per share from the prior day's  
 10 closing price of \$13.75 (46.18%) to close trading at \$7.40 per share on June 22, 2020.  
 11 Shares of WRCDF fell \$12.45 per share from the previous-day's closing price of  
 12 \$27.6 (45.11%) to close trading at \$15.15 per share on June 22, 2020.

14 198. On June 24, 2020, multiple news reports announced that Wirecard's  
 15 former chief operating officer, Defendant Jan Marsalek, was missing and may have  
 16 travelled to the Philippines. Menardo Guevarra, the Philippine secretary of justice,  
 17 reportedly announced an investigation into the Wirecard fraud by the Philippine  
 18 National Bureau of Investigation.<sup>74</sup>

22 <sup>72</sup> Karin Matussek and Sarah Syed, *Former Wirecard CEO Braun arrested over*  
 23 *missing cash scandal*, Accounting Today (June 23, 2020),  
 24 [https://www.accountingtoday.com/articles/former-wirecard-ceo-braun-arrested-over-](https://www.accountingtoday.com/articles/former-wirecard-ceo-braun-arrested-over-missing-cash-scandal)  
[missing-cash-scandal](https://www.accountingtoday.com/articles/former-wirecard-ceo-braun-arrested-over-missing-cash-scandal).

25 <sup>73</sup> Steve Goldstein, *Wirecard says it's terminated COO Marsalek*, MarketWatch  
 26 (June 22, 2020), [https://www.marketwatch.com/story/wirecard-says-its-terminated-](https://www.marketwatch.com/story/wirecard-says-its-terminated-coo-marsalek-2020-06-22)  
[coo-marsalek-2020-06-22](https://www.marketwatch.com/story/wirecard-says-its-terminated-coo-marsalek-2020-06-22).

27 <sup>74</sup> John Reed, Olaf Storbeck, and Stefania Palma, *Philippine authorities search for*  
 28 *Wirecard's number two in fraud probe*, Financial Times (June 24, 2020),

1           199. On this news, shares of WCAGY fell \$3.21 per share from the prior day's  
 2 closing price of \$10.06 (31.91%) to close trading at \$6.85 per share on June 24, 2020.  
 3 Shares of WRCDF fell \$6.14 per share from the previous-day's closing price of  
 4 \$20.00 (30.70%) to close trading at \$13.86 per share on June 24, 2020.

6           200. On June 25, 2020, just days after \$2 billion was announced missing by its  
 7 auditor, Wirecard filed for insolvency. The Company said in a statement that it had  
 8 opened legal proceedings in Munich "due to impending insolvency and over-  
 9 indebtedness."<sup>75</sup> At the time of filing, Wirecard reportedly owed creditors almost \$4  
 10 billion, and the Company admitted that, with 1.3 billion euros (\$1.5 billion) of loans  
 11 due within a week, its survival as a going concern was "not assured."<sup>76</sup>

14           201. On this news, shares of WCAGY fell \$5.11 per share from the prior day's  
 15 closing price of \$6.85 (74.60%) to close trading at \$1.74 per share on June 25, 2020.  
 16 Shares of WRCDF fell \$10.26 per share from the previous-day's closing price of  
 17 \$13.86 (74.03%) to close trading at \$3.60 per share on June 25, 2020.

20 \_\_\_\_\_  
 21 <https://www.ft.com/content/fa01a04f-8f35-4219-9aff-58f4ba58fd34>; *see also* Jörn  
 22 Poltz and Karen Lema, *Philippines to investigate Wirecard's phantom billions*,  
 23 Reuters (June 24, 2020), <https://www.reuters.com/article/us-wirecard-accounts/former-wirecard-ceo-freed-on-bail-in-missing-billions-case-idUSKBN23V0Y2>.

24 <sup>75</sup> Charles Riley, *Wirecard files for insolvency after ex-CEO arrested in \$2 billion*  
 25 *scandal*, CNN Business (June 25, 2020),  
 26 <https://www.cnn.com/2020/06/25/tech/wirecard-insolvency/index.html>.

27 <sup>76</sup> Arno Schuetze and John O'Donnell, *'The money's gone': Wirecard collapses*  
 28 *owing \$4 billion*, Reuters (June 25, 2020), <https://news.yahoo.com/wirecard-files-insolvency-083819193.html>.



202. The Class Period concludes on June 26, 2020, when news reports disclosed that U.K. financial regulators had frozen Wirecard's British operations (Wirecard Card Solutions), leaving consumers unable to use the Company's payment cards, and unable to access cash using Wirecard technology.<sup>77,78</sup> Visa Inc. and MasterCard Inc. were also reportedly considering revoking Wirecard AG's ability to process payments on their networks.<sup>79</sup>

203. At the same time, E&Y, which audited Wirecard for a decade, was facing increased scrutiny for its failure to conduct routine audit procedures that would have revealed the fraud earlier. Among its scrutinized actions was E&Y's failure for more than three years to request crucial account information from a Singapore bank where Wirecard claimed it had up to €1bn in cash — a routine audit procedure that could have uncovered the vast fraud at Wirecard.<sup>80</sup> The German shareholders' association

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<sup>77</sup> Paul J. Davies and Caitlin Ostroff, *U.K. Regulators Suspend Wirecard's British Operations*, The Wall Street Journal (June 26, 2020), <https://www.wsj.com/articles/regulators-suspend-wirecards-british-operations-11593176858>.

<sup>78</sup> Kevin Peachey, *Wirecard: Cardholders' money locked as FCA freezes UK subsidiary*, BBC News (June 26, 2020), <https://www.bbc.com/news/business-53198409>.

<sup>79</sup> Sarah Syed, Jennifer Surane, and Steven Arons, *Visa, Mastercard Weigh Cutting Wirecard Ties After Scandal*, BloombergQuint (June 26, 2020), <https://www.bloombergquint.com/business/visa-mastercard-weigh-cutting-ties-with-wirecard-after-scandal>.

<sup>80</sup> Olaf Storbeck, Tabby Kinder, and Stefania Palma, *EY failed to check Wirecard bank statements for 3 years*, The Financial Times (June 26, 2020), <https://www.ft.com/content/a9deb987-df70-4a72-bd41-47ed8942e83b>.



1 SdK announced that it had filed a criminal complaint against auditors at E&Y,  
 2 targeting two current employees and one former employee of E&Y.<sup>81</sup>

3  
 4 204. On this news, shares of WCAGY fell \$0.95 per share from the prior day's  
 5 closing price of \$1.74 (54.60%) to close trading at \$0.79 per share on June 26, 2020.  
 6 Shares of WRCDF fell \$2.00 per share from the previous-day's closing price of \$3.60  
 7 (55.56%) to close trading at \$1.60 per share on June 26, 2020.  
 8

9 205. As a result of Defendants' wrongful acts and omissions, and the  
 10 precipitous decline in the market value of the Company's securities, Plaintiff and other  
 11 Class members have suffered significant losses and damages.  
 12

### 13 **IX. E&Y'S DEFICIENT AUDIT AND ROLE IN THE SCHEME**

14 206. Wirecard was only able to successfully perpetrate its massive accounting  
 15 scheme because of E&Y's either knowing complicity, or egregious refusal to see the  
 16 obvious or to investigate the doubtful. As described by *The Financial Times*, E&Y's  
 17 prestige and reputation was instrumental in convincing investors that Wirecard's  
 18 reported financial results were legitimate:<sup>82</sup>  
 19  
 20

21 For a decade, EY's reputation as one of the Big Four  
 22 worldwide accountancy and auditing firms has helped to  
 23 rebuff criticism of Wirecard's accounts and business

24 <sup>81</sup> Ryan Browne, *Wirecard auditors face legal action after collapse of scandal-hit*  
 25 *payments firm*, CNBC (June 26, 2020), [https://www.cnbc.com/2020/06/26/wirecard-](https://www.cnbc.com/2020/06/26/wirecard-investor-group-files-criminal-complaint-against-ey-auditors.html)  
 26 [investor-group-files-criminal-complaint-against-ey-auditors.html](https://www.cnbc.com/2020/06/26/wirecard-investor-group-files-criminal-complaint-against-ey-auditors.html).

27 <sup>82</sup> Dan McCrum, *Wirecard's Suspect Accounting Practices Revealed*, *The Financial*  
 28 *Times* (Oct. 15, 2019), [https://www.ft.com/content/19c6be2a-ee67-11e9-bfa4-](https://www.ft.com/content/19c6be2a-ee67-11e9-bfa4-b25f11f42901)  
[b25f11f42901](https://www.ft.com/content/19c6be2a-ee67-11e9-bfa4-b25f11f42901).

1 practices. Its signature on the financial statements in April this  
2 year helped to convince many investors that Mr Braun's  
3 decision to minimise the Singapore accounting scandal —  
first reported by the FT — was credible.

4 207. E&Y's audit procedures and practices were so deficient that their audits  
5 of Wirecard's 2015-2018 reported financial results amounted to an egregious refusal  
6 to see the obvious or to investigate the doubtful. E&Y's auditing judgments were such  
7 that no reasonable accountant would have made the same decisions if confronted with  
8 the same facts, causing the "audits" to be entirely worthless and amount to no audit at  
9 all.  
10  
11

12 208. E&Y, which audited Wirecard for a decade, has faced increased scrutiny  
13 for its failure to conduct routine audit procedures that would have revealed the fraud  
14 earlier. Among its scrutinized actions was E&Y's failure for more than three years to  
15 request crucial account information from a Singapore bank where Wirecard claimed it  
16 had up to €1bn in cash — a routine audit procedure that could have uncovered the vast  
17 fraud at Wirecard. The German shareholders' association SdK announced that it had  
18 filed a criminal complaint against auditors at E&Y, targeting two current employees  
19 and one former employee of E&Y.  
20  
21  
22

23 209. E&Y audited Wirecard's financial statements for the years ended  
24 December 31, 2015 through December 31, 2018.  
25

26 210. E&Y's opinion letters stated that it had conducted its audits in accordance  
27 with German generally accepted standards for the audit of financial statements  
28

1 promulgated by the Institut der Wirtschaftsprüfer [Institute of Public Auditors in  
2 Germany] (IDW) and International Auditing Standards “IAS”). The IAS refers to  
3 standards established by the International Auditing and Assurance Standards Board,  
4 which functions as an independent standard setting body under the auspices of the  
5 International Federation of Accountants (“IFAC”). IFAC issues International  
6 Standards on Auditing (“ISA”), which are similar to those issued by the American  
7 Institute of Certified Public Accountants and the Public Company Accounting  
8 Oversight Board.  
9  
10

11  
12 211. Each year, E&Y issued a “clean” unqualified report attesting to the  
13 accuracy of Wirecard’s financial statements.

14  
15 212. E&Y’s audit opinions for at least the years ended December 31, 2015  
16 through December 31, 2018 falsely stated that the firm’s audits of Wirecard had been  
17 conducted in accordance with German GAAS and IAS standards. Its representations  
18 were false because, upon information and belief, E&Y did not plan and perform its  
19 audits to obtain reasonable assurances that Wirecard’s financial statements were free  
20 of material misstatements, and did not examine evidence supporting the purported  
21 bank balances and disclosures in the financial statements. E&Y’s audits therefore did  
22 not “provide a reasonable basis for [its] opinion” and, by stating to the contrary, the  
23 opinions were entirely false.  
24  
25  
26  
27  
28

1           213. E&Y willfully, recklessly and/or grossly failed in its responsibility to  
2 confirm the accuracy of Wirecard's financial disclosures in at least the following  
3 respects:  
4

5           a) ISA 200 requires an auditor to plan and perform an audit with an  
6 attitude of professional skepticism, which is necessary for the auditor to identify  
7 and properly evaluate matters that increase the risk of material misstatements  
8 resulting from fraud or error (for example, management's characteristics and  
9 influence over the internal control environment, industry conditions, and  
10 operating characteristics and financial stability). Thus, representations by  
11 management would ordinarily be expected to be supported by other evidence  
12 and would not be assumed to be necessarily correct.  
13

14           b) Wirecard's claims of steadily increasing revenues and escalating  
15 cash balances should have been met with skepticism on the part of E&Y, but  
16 were not. One of the most basic tools employed by virtually every auditor of a  
17 company with significant cash balances is to obtain a confirmation of the  
18 existence and balances of the Company's bank. ISAS505, *External*  
19 *Confirmations*, recognizes that "the reliability of audit evidence is influenced by  
20 its source and by its nature, and is dependent on the individual circumstances  
21 under which it is obtained." Further, this auditing standard recognizes that  
22 "[a]udit evidence is more reliable when it is obtained from independent sources  
23 outside the entity" and "[a]udit evidence obtained directly by the auditor is more  
24  
25  
26  
27  
28

1 reliable than audit evidence obtained indirectly or by inference.” Accordingly, it  
2 was, at a minimum, reckless for E&Y to not obtain bank confirmations directly  
3 from the banks that Wirecard claimed held billions of Euros of its assets during  
4 the Class Period.  
5

6 c) Additionally, E&Y should have recognized a variety of “red flags”  
7 raised by the information it was receiving including, but not limited to: (i)  
8 dramatically increasing reported sales by Wirecard, primarily through  
9 partnerships between a small number of opaque and questionable TPAs with  
10 foreign Wirecard subsidiaries that were not audited by E&Y; (ii) corresponding  
11 dramatic increases in reported bank balances in odd locations such as the  
12 Philippines; (iii) increasing loan balances by the company despite its reported  
13 large cash balances; and d) the stockpiling of billions of dollars of Euros in a  
14 small bank in the Philippines.  
15  
16  
17

18 214. Despite these and other “red flags” that should have compelled E&Y to  
19 perform more extensive audit procedures under International Auditing Standards, it  
20 refused to perform even the simple and basic step of obtaining a confirmation of these  
21 highly questionable bank balances directly from the bank. This failure allowed  
22 Wirecard to perpetrate its accounting scheme and overstate its reported bank balances  
23 and revenues by at least €1.9 billion during the Class Period.  
24  
25

26 215. E&Y failed, *inter alia*, (i) to exercise due professional care in the  
27 performance of the audits and the preparation of the reports; (ii) to obtain a level of  
28

1 knowledge of Wirecard's business that would enable E&Y to plan and perform its  
2 audits in accordance with international auditing standards, including an understanding  
3 of the events, transactions, and practices that could have a significant effect on the  
4 financial statements; (iii) to properly study and evaluate Wirecard's internal controls;  
5 (iv) to obtain sufficient, competent evidential material to provide it with a reasonable  
6 basis for forming an opinion in each of its audits of Wirecard; and (v) to satisfy itself  
7 that the financial disclosures were adequate.  
8

9  
10 216. E&Y knew or should have known that its clean audit reports were  
11 material to investors' decisions to purchase shares in Wirecard and to refrain from  
12 redeeming their investments. Shares of Wirecard were not publicly traded. Hence, no  
13 independently verified third-party financial information about Wirecard or their  
14 performance was available to investors or prospective investors in Wirecard other than  
15 E&Y's audit report and the audited financial statements.  
16  
17

#### 18 **X. APPLICABILITY OF PRESUMPTION OF RELIANCE**

19 217. Plaintiff will rely, in part, upon the presumption of reliance established by  
20 the fraud-on-the-market doctrine in that at all relevant times, WDI, WCAGY and  
21 WRCDF traded in an efficient market. The efficiency of the market for these securities  
22 may be established by the following facts, among others:  
23  
24

25 a) Defendants made public misrepresentations or failed to disclose  
26 material facts during the Class Period;

27 b) the omissions and misrepresentations were material;  
28

1 c) the Company's securities are traded in efficient markets;

2 d) the Company's securities were liquid and traded with moderate to  
3 heavy volume during the Class Period;  
4

5 e) WCAGY and WRCDF were actively traded as ADRs on the OTC  
6 Markets in the United States at prices that matched the contemporaneous trading  
7 price of Wirecard common stock on the FWB and other German markets. Both  
8 the FWB and the OTC Markets are highly efficient and automated markets;  
9

10 f) During the Class Period, Wirecard was followed by multiple  
11 analysts;  
12

13 g) Wirecard published its quarterly and annual reports, press releases,  
14 presentation materials, and other material information of significance to  
15 investors on its website, including contemporaneous English-language versions  
16 of materials submitted to regulators in Europe;  
17

18 h) the misrepresentations and omissions alleged would tend to induce  
19 a reasonable investor to misjudge the value of the Company's securities;  
20 Plaintiff and members of the Class purchased and/or sold the Company's  
21 securities between the time the Defendants failed to disclose or misrepresented  
22 material facts and the time the true facts were disclosed, without knowledge of  
23 the omitted or misrepresented facts; and  
24  
25  
26  
27  
28

1 i) Unexpected material news about the Company was rapidly  
2 reflected in and incorporated into the Company's stock price during the Class  
3 Period.  
4

5 218. Information that affected the price of Wirecard's common stock affected  
6 the price of WCAGY and WRCDF in the same manner and to the same extent. The  
7 price of Wirecard's common (F) shares and ADRs traded on the OTC Markets in the  
8 United States during the Class Period was based upon and moved in tandem with the  
9 price of Wirecard's common stock traded on FWB. The price of WRCDF shares  
10 generally tracks the currency-adjusted price of WDI common stock on the FWB  
11 exchange. The price of WCAGY shares, which reflect an ownership interest in .5  
12 shares of Wirecard's common stock, is generally one-half the currency-adjusted price  
13 of Wirecard's common stock traded on the FWB. As a result, the same facts that  
14 support the finding that the market for Wirecard common stock sold on the FWB in  
15 Germany was efficient also support a finding that the market for Wirecard's common  
16 stock sold on the OTC market in the United States was efficient. The price of both  
17 WCAGY and WRCDF sold in the United States is linked to and moves in tandem with  
18 the price of Wirecard WDI common stock on the Frankfurt exchange.  
19  
20  
21  
22  
23

24 219. Based upon the foregoing, Plaintiff and the members of the Class are  
25 entitled to a presumption of reliance upon the integrity of the market.  
26

27 220. Alternatively, Plaintiff and the members of the Class are entitled to the  
28 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*



1 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants  
2 omitted material information in their Class Period statements in violation of a duty to  
3 disclose such information, as detailed above.  
4

## 5 **XI. LOSS CAUSATION & DAMAGES**

6 221. Plaintiff and each member of the proposed Class suffered economic  
7 losses as a direct and proximate result of the misleading conduct alleged herein. Each  
8 Class member suffered similar injury as a result of: (i) their purchase of Wirecard  
9 securities at prices that were higher than they would have been had defendant made  
10 truthful and complete disclosures of information about the Company as necessary to  
11 prevent the statements, omissions, and course of business alleged herein from being  
12 materially false or misleading to investors; and (ii) their retention of those securities  
13 through the date of one or more declines in the market price of those shares that was  
14 caused by the revelation of facts, transactions, occurrences, or risks concealed from  
15 investors by defendant's scheme to defraud, including the actual or anticipated  
16 financial consequences of its concealed actions.  
17

18 222. The fraudulent accounting and the other misrepresentations and  
19 omissions alleged herein caused shares of WCAGY and WRCDF to trade at prices  
20 higher than they would have during the Class Period had the Company disclosed  
21 accurate and truthful information about the financial condition, results, and operations  
22 of its business.  
23  
24  
25  
26  
27  
28

1           223. The declines in the price of the Wirecard securities and resulting losses  
2 are directly attributable to the disclosure of information and materialization of risks  
3 that were previously misrepresented or concealed by the Defendants. Had Plaintiffs  
4 known of the material adverse information not disclosed by the Defendants or been  
5 aware of the truth behind their material misstatements, they would not have purchased  
6 the Wirecard securities at artificially inflated prices.  
7  
8

9           224. As a result of their purchases of the Wirecard securities, Plaintiff suffered  
10 economic loss and damages, as contemplated by the federal securities laws.  
11

12 **A. Loss Causation is Demonstrated by the Revelation of Defendants' Fraud**  
13 **Through a Series of Corrective Disclosures**

14           225. Loss causation is demonstrated when the truth behind Defendants'  
15 various false statements and material omissions was gradually revealed to the market  
16 in a series of corrective disclosures. When the truth about Defendants' misconduct was  
17 revealed through a series of disclosures including, but limited to, the following, the  
18 value of Wirecard securities declined precipitously as the prior artificial inflation no  
19 longer propped up the Company's prices:  
20

- 21                   a) **Disclosures Regarding Allegations of Forged Contracts.** In  
22 response to the January 30, 2019 report by *The Financial Times* that a senior  
23 Wirecard official was suspected of using forged and backdated contracts to  
24 manipulate the Company's financial results, shares of WCAGY fell \$8.54 per  
25  
26  
27  
28

1 share or nearly 9% to close at \$86.66 and shares of WRCDF fell \$28.10 per  
2 share or nearly 15% to close at \$161.90 per share. (See ¶¶ 169-70);

3  
4 b) **Disclosure of Internal Investigation of Fraud.** In response to the  
5 February 1 2019 report by *The Financial Times* that a law firm retained by  
6 Wirecard found forgery and falsification of accounts in the Company's  
7 Singapore office, shares of WCAGY fell \$16.60 per share (nearly 20%) and  
8 shares of WRCDF fell \$30.17 (18.4%). (See ¶¶ 172-73);

9  
10 c) **Disclosure of Wirecard's Accounting Practices.** In response to  
11 April 24, 2019 and April 25, 2019 news reports outlining Wirecard's  
12 questionable accounting practices, shares of WCAGY fell \$4.72 per share  
13 (about 6.2%) and shares of WRCDF fell \$6.00 per share (4.1%). (See ¶¶ 174-  
14 76);

15  
16  
17 d) **Further Disclosure of Accounting Practices and Internal**  
18 **Wirecard Documents.** In response to October 14, 2019 news reports casting  
19 further doubts upon Wirecard's accounting practices, along with internal  
20 Wirecard documents confirming these reports, shares of WCAGY fell \$1.09  
21 (about 1.4%) on October 14, 2019 and another \$9.83 (12.73%) on October 15,  
22 2019. Shares of WRCDF fell \$5.92 (5.92%) on October 14, 2019 and another  
23 \$17.25 (11.36%) on October 15, 2019. (See ¶¶ 177-78);

24  
25  
26 e) **Disclosure of KPMG Findings.** In response to KPMG's April 28,  
27 2020 disclosures regarding its forensic investigation into Wirecard's accounting  
28

1 policies, shares of WCAGY plunged on April 28, 2020 by \$17.13 (17.13%) and  
2 another \$4.91 (9.00%) on April 29, 2020. Shares of WRCDF dropped \$35.75 on  
3 April 28, 2020 (25.39%) and another \$5.04 (4.80%) on April 29, 2020 (*See ¶¶*  
4 183-85);

5  
6 f) **Disclosures of Additional Details Regarding Wirecard's False**  
7 **Accounting**. In response to further reporting on May 4, 2020 regarding  
8 Wirecard's false accounting and Defendant Braun's refusals to resign, shares of  
9 WCAGY fell \$1.16 per share (2.36%) and shares of WRCDF fell \$2.64 (2.61%)  
10 from a previous-day close of \$101.25 to close at \$98.61 per share on May 4,  
11 2020. (*See ¶¶* 186-87);

12  
13 g) **Disclosure of Rejection of Wirecard's "Short-seller" Claims**. In  
14 response to the May 11, 2020 disclosure that a Munich court had flatly rejected  
15 Wirecard's excuse that short-sellers were responsible for the Company's  
16 declining share price, shares of WCAGY fell approximately \$1.41 per share  
17 (2.77%) and shares of WRCDF fell approximately \$7.98 (7.67%). (*See ¶¶* 188-  
18 89);

19  
20 h) **Disclosure of Missing Cash Balances**. In response to the June 18,  
21 2020 disclosure by Wirecard that E&Y had informed the Company that EUR  
22 1.9 billion of previously reported cash balances could not be accounted for,  
23 shares of WCAGY plummeted by \$38.30 per share (65.47%) and shares of  
24 WRCDF fell \$71.47 (71.74%). (*See ¶¶* 190-91);

1                   i)       **Disclosure of Defendant Braun’s Resignation.** In response to  
 2 Wirecard’s June 19, 2020 disclosure of Defendant Braun’s resignation as CEO  
 3 on June 19, 2020, shares of WCAGY fell approximately \$6.45 (31.93%) and  
 4 shares of WRCDF fell \$14.22 (34.00%). (See ¶¶ 192-93);

6                   j)       **Disclosures Regarding Wirecard’s Admission of Accounting**  
 7 **Misstatements and Defendant Braun’s Arrest.** In response to Wirecard’s  
 8 June 22, 2020 admissions that billions of Euros on its previously-reported  
 9 balance sheets “probably did not exist” and its withdrawal of previously  
 10 reported financial results and Defendant Braun’s arrest, shares of WCAGY fell  
 11 \$6.35 per share (46.18%) and shares of WRCDF fell \$12.45 (45.11%). (See ¶¶  
 12 194-96);

15                   k)       **Disclosures Regarding Defendant Marsalek.** In response to June  
 16 24, 2020 news reports that Defendant Marsalek was “missing,” and may have  
 17 travelled to the Philippines, shares of WCAGY fell \$3.21 (31.91%) and shares  
 18 of WRCDF fell \$6.14 (30.70%). (See ¶¶ 198-99);

21                   l)       **Disclosures Regarding Wirecard’s Bankruptcy.** In response to  
 22 Wirecard’s June 25, 2020 disclosure that it had filed for insolvency, shares of  
 23 WCAGY fell \$5.11 (74.6%) and shares of WRCDF fell \$10.26 (74.03%). (See  
 24 ¶¶ 200-01);

26                   m)       **Disclosures Regarding UK Regulator’s Freeze of Wirecard**  
 27 **Operations.** In response to disclosures that U.K. financial regulators had frozen  
 28

1 Wirecard's British operations, shares of WCAGY fell \$0.95 (54.60%) and  
2 shares of WRCDF fell \$2.00 (55.56%) on June 26, 2020. (See ¶¶ 202-04)

3  
4 226. These declines in the prices of the Wirecard securities immediately  
5 following corrective disclosures were a direct result of the nature and extent of  
6 Defendants' fraudulent misrepresentations being revealed to Plaintiff and other  
7 investors. The timing and magnitude of the price declines negates any inference that  
8 the losses suffered by Plaintiff were caused by changed market conditions,  
9 macroeconomic or industry factors, or Company-specific facts unrelated to  
10 Defendants' fraudulent conduct.  
11

12  
13 **B. Alternatively, Loss Causation is Demonstrated by the Materialization of**  
14 **Concealed Risks**

15 227. Alternatively, loss causation can be demonstrated by the materialization  
16 of the risks concealed by Defendants' misconduct. At the time of each of Plaintiff's  
17 purchases, the price of the Wirecard ADRs were artificially inflated as a result of: (i)  
18 Defendants' undisclosed widespread bribery and kickback scheme which was  
19 unlawful, and hence inherently unstable; and (ii) Defendant CNO's materially false  
20 financial statements.  
21

22  
23 228. Defendants' false statements served to conceal the risks that the  
24 Defendants' preparation and dissemination of false financial statements would become  
25 publicly available.  
26  
27  
28

229. It was foreseeable that the public exposure of Wirecard's accounting and financial reporting scheme would lead to negative financial and legal consequences to Defendants, including: (i) ratings agency downgrades; (ii) deteriorating liquidity and bankruptcy; (iii) regulatory investigations; (iv) criminal prosecutions of Wirecard and/or its employees; (v) withdrawal of previously issued financial reports; and (vi) the inability to complete and timely file required financial statements. The materialization of any one or more of these factors would lead to a significant decline in the price of Wirecard securities.

230. The value of Plaintiff's investments in Wirecard securities was negatively impacted when the concealed risks materialized in at least, but not limited to, the following respects:

- a) **Ratings agency downgrades:** (§ 16);
- b) **Adverse publicity and reputational damage:** (§§ 169, 172, 174-75, 179, 183-84, 186, 194);
- c) **Whistleblower activity:** (§§ 169);
- d) **Deteriorating liquidity:** (§§ 194, 200);
- e) **Regulatory investigations:** (§§ 175, 198, 202-03);
- f) **Employee Resignations or firings:** (§§ 181, 192, 196);
- g) **Criminal prosecutions:** (§§ 175; 196);
- h) **Withdrawal of Previously Reported Financial Results** (§ 194);

and

1                   i) **Inability to complete and timely file required financial**  
 2                   **statements:** (§§ 175, 190).

## 3                   **XII. PLAINTIFF’S CLASS ACTION ALLEGATIONS**

4                   231. Plaintiff brings this action as a class action pursuant to Federal Rule of  
 5 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons and  
 6 entities other than Defendants who purchased shares of WCAGY and WRCDF on the  
 7 OTC Market between August 17, 2015 through June 26, 2020, both dates inclusive  
 8 (the “Class Period”). Excluded from the Class are Defendants herein, the officers and  
 9 directors of the Company, at all relevant times, members of their immediate families  
 10 and their legal representatives, heirs, successors or assigns and any entity in which  
 11 Defendants have or had a controlling interest.

12                   232. The members of the Class are so numerous that joinder of all members is  
 13 impracticable. Throughout the Class Period, the Company’s securities were actively  
 14 traded OTC. While the exact number of Class members is unknown to Plaintiff at this  
 15 time and can be ascertained only through appropriate discovery, Plaintiff believes that  
 16 there are hundreds or thousands of members in the proposed Class. Record owners and  
 17 other members of the Class may be identified from records maintained by the  
 18 Company or its transfer agent and may be notified of the pendency of this action by  
 19 mail, using the form of notice similar to that customarily used in securities class  
 20 actions.



1           233. Plaintiff's claims are typical of the claims of the members of the Class as  
2 all members of the Class are similarly affected by Defendants' wrongful conduct in  
3 violation of federal law that is complained of herein.  
4

5           234. Plaintiff will fairly and adequately protect the interests of the members of  
6 the Class and has retained counsel competent and experienced in class and securities  
7 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the  
8 Class.  
9

10           235. Common questions of law and fact exist as to all members of the Class  
11 and predominate over any questions solely affecting individual members of the Class.  
12 Among the questions of law and fact common to the Class are:  
13

14                   a) whether Defendants' acts as alleged violated the federal securities  
15 laws;  
16

17                   b) whether Defendants' statements to the investing public during the  
18 Class Period misrepresented material facts about the financial condition,  
19 business, operations, and management of the Company;  
20

21                   c) whether Defendants' statements to the investing public during the  
22 Class Period omitted material facts necessary to make the statements made, in  
23 light of the circumstances under which they were made, not misleading;  
24

25                   d) whether the Individual Defendants caused the Company to issue  
26 false and misleading quarterly and annual reports and public statements during  
27 the Class Period;  
28

e) whether Defendants acted knowingly or recklessly in issuing false and misleading quarterly and annual reports and public statements during the Class Period;

f) whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and

g) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

236. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **XIII. CLAIMS FOR RELIEF**

#### **COUNT I**

#### **Violation of Section 10(b) of The Exchange Act and Rule 10b-5 Against Defendant Wirecard and the Individual Defendants**

237. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

1           238. This Count is asserted against the Company and the Individual  
2 Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b),  
3 and Rule 10b-5 promulgated thereunder by the SEC.  
4

5           239. During the Class Period, the Company and the Individual Defendants,  
6 individually and in concert, directly or indirectly, disseminated or approved the false  
7 statements specified above, which they knew or deliberately disregarded were  
8 misleading in that they contained misrepresentations and failed to disclose material  
9 facts necessary in order to make the statements made, in light of the circumstances  
10 under which they were made, not misleading.  
11  
12

13           240. The Company and the Individual Defendants violated § 10(b) of the 1934  
14 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to defraud;  
15 made untrue statements of material facts or omitted to state material facts necessary in  
16 order to make the statements made, in light of the circumstances under which they  
17 were made, not misleading; and/or engaged in acts, practices and a course of business  
18 that operated as a fraud or deceit upon plaintiff and others similarly situated in  
19 connection with their purchases of the Company's securities during the Class Period.  
20  
21

22           241. The Company and the Individual Defendants acted with scienter in that  
23 they knew that the public documents and statements issued or disseminated in the  
24 name of the Company were materially false and misleading; knew that such  
25 statements or documents would be issued or disseminated to the investing public; and  
26 knowingly and substantially participated, or acquiesced in the issuance or  
27  
28

1 dissemination of such statements or documents as primary violations of the securities  
2 laws. These Defendants, by virtue of their receipt of information reflecting the true  
3 facts of the Company, their control over, and/or receipt and/or modification of the  
4 Company's allegedly materially misleading statements, and/or their associations with  
5 the Company which made them privy to confidential proprietary information  
6 concerning the Company, participated in the fraudulent scheme alleged herein.  
7  
8

9       242. Individual Defendants, who are the senior officers and/or directors of the  
10 Company, had actual knowledge of the material omissions and/or the falsity of the  
11 material statements set forth above, and intended to deceive Plaintiff and the other  
12 members of the Class, or, in the alternative, acted with reckless disregard for the truth  
13 when they failed to ascertain and disclose the true facts in the statements made by  
14 them or other personnel of the Company to members of the investing public, including  
15 Plaintiff and the Class.  
16  
17

18       243. As a result of the foregoing, the market price of the Company's securities  
19 was artificially inflated during the Class Period. In ignorance of the falsity of the  
20 Company's and the Individual Defendants' statements, Plaintiff and the other  
21 members of the Class relied on the statements described above and/or the integrity of  
22 the market price of the Company's securities during the Class Period in purchasing the  
23 Company's securities at prices that were artificially inflated as a result of the  
24 Company's and the Individual Defendants' false and misleading statements.  
25  
26  
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244. Had Plaintiff and the other members of the Class been aware that the market price of the Company's securities had been artificially and falsely inflated by the Company's and the Individual Defendants' misleading statements and by the material adverse information which the Company's and the Individual Defendants did not disclose, they would not have purchased the Company's securities at the artificially inflated prices that they did, or at all.

245. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

246. By reason of the foregoing, the Company and the Individual Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the Plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchases of the Company's securities during the Class Period.

## COUNT II

## Violation of Section 20(a) of The Exchange Act Against The Individual Defendants

247. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

248. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their

1 senior positions, they knew the adverse non-public information regarding the  
2 Company's business practices.

3  
4 249. As officers and/or directors of a publicly owned company, the Individual  
5 Defendants had a duty to disseminate accurate and truthful information with respect to  
6 the Company's financial condition and results of operations, and to correct promptly  
7 any public statements issued by the Company which had become materially false or  
8 misleading.

9  
10 250. Because of their positions of control and authority as senior officers, the  
11 Individual Defendants were able to, and did, control the contents of the various  
12 reports, press releases and public reports and/or filings which the Company  
13 disseminated in the marketplace during the Class Period. Throughout the Class Period,  
14 the Individual Defendants exercised their power and authority to cause the Company  
15 to engage in the wrongful acts complained of herein. The Individual Defendants  
16 therefore, were "controlling persons" of the Company within the meaning of Section  
17 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct  
18 alleged which artificially inflated the market price of the Company's securities.

19  
20 251. Each of the Individual Defendants, therefore, acted as a controlling  
21 person of the Company. By reason of their senior management positions and/or being  
22 directors of the Company, each of the Individual Defendants had the power to direct  
23 the actions of, and exercised the same to cause, the Company to engage in the  
24 unlawful acts and conduct complained of herein. Each of the Individual Defendants

1 exercised control over the general operations of the Company and possessed the power  
2 to control the specific activities which comprise the primary violations about which  
3 Plaintiff and the other members of the Class complain.  
4

5 252. By reason of the above conduct, the Individual Defendants are liable  
6 pursuant to Section 20(a) of the Exchange Act for the violations committed by the  
7 Company.  
8

### 9 **COUNT III**

#### 10 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5** 11 **Against Ernst & Young GmbH**

12 253. Plaintiff repeats and realleges each and every allegation contained in the  
13 foregoing paragraphs as if fully set forth herein.

14 254. During the Class Period, E&Y carried out a plan, scheme and course of  
15 conduct which was intended to, and throughout the Class Period, did: (1) deceive the  
16 investing public, including Plaintiffs and other Class members, as alleged herein; and  
17 (2) cause Plaintiffs and other members of the Class to purchase Wirecard securities at  
18 artificially inflated and distorted prices. In furtherance of this unlawful scheme, plan  
19 and course of conduct, E&Y issued knowingly false audit reports during the Class  
20 Period. E&Y's accounting practices were so deficient that the audit amounted to no  
21 audit at all, or an egregious refusal to see the obvious, or to investigate the doubtful, or  
22 that the accounting judgments which were made were such that no reasonable  
23 accountant would have made the same decisions if confronted with the same facts.  
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1           255. E&Y, directly and indirectly, by the use, means or instrumentalities of  
2 interstate commerce and/or of the mails, engaged and participated in a continuous  
3 course of conduct to misrepresent the true financial condition of Wirecard and conceal  
4 adverse material information about the business, operations and future prospects of  
5 Wirecard as specified herein.  
6

7           256. E&Y employed devices, schemes and artifices to defraud, while in  
8 possession of material adverse non-public information and engaged in acts, practices,  
9 and a course of conduct as alleged herein in an effort to assure investors of Wirecard's  
10 value, performance and continued substantial growth, which included the making of,  
11 or the participation in the making of, untrue statements of material facts and omitting  
12 to state material facts necessary in order to make the statements made about Wirecard  
13 and its business operations and financial condition in light of the circumstances under  
14 which they were made, not misleading, as set forth more particularly herein, and  
15 engaged in transactions, practices and a course of business that operated as a fraud and  
16 deceit upon the purchasers of Wirecard securities during the Class Period.  
17

18           257. E&Y had actual knowledge of the misrepresentations and omissions of  
19 material facts set forth herein, or acted with reckless disregard for the truth in that  
20 failed to ascertain and to disclose such facts, even though such facts were available to  
21 them. E&Y's material misrepresentations and/or omissions were done knowingly or  
22 recklessly and for the purpose and effect of concealing Wirecard's financial condition  
23 from the investing public and supporting the artificially inflated price of its securities.  
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28



1 As demonstrated by E&Y's false and misleading statements during the Class Period,  
2 E&Y, if it did not have actual knowledge of the misrepresentations and omissions  
3 alleged, was highly reckless in failing to obtain such knowledge by failing to take  
4 steps necessary to discover whether those statements were false or misleading.  
5

6 258. As a result of the dissemination of the materially false and misleading  
7 information and failure to disclose material facts, as set forth above, the market price  
8 for Wirecard's securities was artificially inflated during the Class Period.  
9

10 259. In ignorance of the fact that market prices of Wirecard's publicly-traded  
11 securities were artificially inflated or distorted, and relying directly or indirectly on the  
12 false and misleading statements made by defendants, or upon the integrity of the  
13 market in which Wirecard's securities trade, and/or on the absence of material adverse  
14 information that was known to or recklessly disregarded by Defendants but not  
15 disclosed in public statements by defendants during the Class Period, Plaintiffs and the  
16 other members of the Class acquired Wirecard securities during the Class Period at  
17 artificially high prices and were damaged thereby.  
18  
19  
20

21 260. At the time of said misrepresentations and omissions, Plaintiffs and other  
22 members of the Class were ignorant of their falsity, and believed them to be true. Had  
23 Plaintiffs and the other members of the Class and the marketplace known the truth  
24 regarding Wirecard's financial results and condition, Plaintiffs and other members of  
25 the Class would not have purchased or otherwise acquired Wirecard securities, or, if  
26  
27  
28

1 they had acquired such securities during the Class Period, they would not have done so  
2 at the artificially inflated prices or distorted prices at which they did.

3  
4 261. By virtue of the foregoing, E&Y has violated Section 10(b) of the  
5 Exchange Act, and Rule 10b-5 promulgated thereunder.

6 262. As a direct and proximate result of the Defendants' wrongful conduct,  
7  
8 Plaintiffs and the other members of the Class suffered damages in connection with  
9 their respective purchases and sales of Wirecard's securities during the Class Period.

#### 10 **XIV. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

12  
13 A. Determining that the instant action may be maintained as a class action  
14 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the  
15 Class representative;

16  
17 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class  
18 by reason of the acts and transactions alleged herein;

19  
20 C. Awarding Plaintiff and the other members of the Class prejudgment and  
21 post-judgment interest, as well as their reasonable attorneys' fees, expert fees and  
22 other costs; and

23  
24 D. Awarding such other and further relief as this Court may deem just and  
25 proper.

#### 26 **XV. DEMAND FOR TRIAL BY JURY**

27 Plaintiff hereby demands a trial by jury.

1 DATED: August 14, 2020

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